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# Report of the Special Rapporteur on trafficking in persons, especially women and children

## Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the thematic report of the Special Rapporteur on trafficking in persons, especially women and children, Maria Grazia Giammarinaro, prepared pursuant to Council resolution 35/5.

State efforts to govern international migration are often disconnected from the legal obligation to identify victims of trafficking in human beings, creating negative consequences for their protection and for the prosecution of traffickers. Unfortunately, the international political agenda, which is focused on the prevention of irregular migration, and the populist and xenophobic anti-migration movements in certain countries and regions, are further encouraging a response to management of migration flows from a crime prevention perspective, which does not place human rights protection at the centre.

In mixed migration movements, people are placed into different categories and allocated different types of assistance accordingly. However, in practice it is challenging to draw clear lines on the circumstances of each migratory journey, and identification through rigid categories could lead to gaps in protection and assistance to victims.

In the present report, the Special Rapporteur analyses challenges in the identification, referral and protection of victims and potential victims of trafficking in persons in the context of mixed migration. Based on the findings and feedback of numerous organizations, she offers recommendations to help States, international organizations and civil society organizations adapt their responses to ensure the effective protection of victims and potential victims of trafficking. These responses must be focused on the identification of groups and persons who by their characteristics and circumstances are in a vulnerable situation, regardless of the specific determination of their case. Activating protection protocols at the outset of identification of vulnerabilities may be one of the most effective ways to assist victims of trafficking and avoid the re-victimization, detention and deportation of victims and potential victims of trafficking in persons.

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# Contents


| | | Page |
|---|---|---|
| I. | Activities of the mandate | 3 |
| II. | Methodology of the report | 3 |
| III. | Introduction | 3 |
| IV. | International and policy framework | 4 |
| V. | Early identification, referral and protection of victims or potential victims of trafficking in persons in mixed migration movements | 5 |
| | A. Identification of victims or potential victims of trafficking at first arrival areas | 5 |
| | B. Identification in transit countries | 9 |
| | C. Identification in countries of destination | 11 |
| | D. Impact of return procedures in identification of victims and potential victims of trafficking in persons | 13 |
| | E. Role of referral mechanism in early identification and assistance to victims of trafficking | 14 |
| VI. | Conclusions and recommendations | 16 |
| | A. Conclusions | 16 |
| | B. Recommendations | 17 |

# I. Activities of the mandate

1. On 5 September 2017, the Special Rapporteur on trafficking in persons, especially women and children participated as a panellist in the fifth informal thematic session of the global compact for safe, orderly and regular migration, entitled "Smuggling of migrants, trafficking in persons and contemporary forms of slavery, including appropriate identification, protection and assistance to migrants and trafficking victims". She made her intervention during the panel discussion on "Appropriate identification, protection and assistance to migrants and trafficking victims".

2. On 10 October 2017, she presented a thematic report to the General Assembly at its seventy-second session, with the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material. In their report, the Special Rapporteurs addressed the vulnerabilities of children to sale, trafficking and other forms of exploitation in situations of conflict and humanitarian crisis.

3. On 1 March 2018, the Special Rapporteur on trafficking in persons convened an expert group meeting in Geneva on addressing trafficking in supply chains through voluntary standards and multi-stakeholder initiatives. The meeting focused on the enhancement of workers' voices in the governance, monitoring and grievance mechanisms of these initiatives and the active participation of workers within.

# II. Methodology of the report

4. In order to gather first-hand information for the present report, on 12–13 October 2017, the Special Rapporteur conducted a thematic visit to Catania, Italy, to better understand the identification procedures at disembarkation places. She also went to Portugal on 1–2 February 2018, where she was informed of good practices for the identification of victims of trafficking for labour exploitation. On 26 March 2018, she exchanged information with the European Border and Coastguard Agency (FRONTEX) on its role in identifying victims of trafficking at external European borders and related human rights concerns. The present report is also based on submissions from partners and stakeholders.

5. On the basis of the above inputs, the Special Rapporteur acknowledges the inadequacy of the current screening tools and methodologies in effectively identifying potential victims and indicators of vulnerability to trafficking. Responses to the call for inputs were abundant, though geographically limited and predominately from Europe, which reflects the current dialogue on migration. It is worrisome that the lack of responses from certain regions might also be due to the shrinking of civil society space. The Special Rapporteur is grateful to organizations that provided feedback to the report. She thanks the Office of the Prosecutor in Catania, the Portuguese National Rapporteur on trafficking in persons and FRONTEX for their role in organizing the three thematic visits, whose findings have enriched the report.

# III. Introduction

6. While a clear legal distinction between smuggling and trafficking has been defined in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the Palermo Protocol), the differences between the two crimes are increasingly blurred in mixed migration movements.

7. The Special Rapporteur considers that trafficking in persons, especially women and children, is primarily a human rights violation, and often interlinked with mixed migration movements, encompassing various categories of persons on the move including refugees, asylum seekers and migrants travelling, mostly in an irregular manner, along similar routes,

using similar means of travel, and for various and often interrelated reasons.[1] People do not necessarily enter mixed migration movements as trafficked persons, but might become trafficked during their journey or when they reach a transit or destination country. Their migration might have started out independently or using the services of a smuggler, but then turned into trafficking at a later stage.

8. Challenges related to the identification and protection of victims of trafficking in persons in the current migration context have not been adequately addressed either at the national, regional or international levels, where Member States are currently negotiating a global compact on refugees and a global compact for safe, orderly and regular migration. Specifically, the so-called migration "crisis" in Europe and elsewhere has exposed serious protection gaps, and State responses demonstrate that the protection of victims or potential victims of trafficking in persons is not often prioritized when countries face irregular migration movements, and is geared towards responding to the needs of the victims of particular categories (mostly the sexual exploitation of women and children).

9. Early identification is being defined as comprising both proactive informal processes as well as a formal process of screening persons to detect indications of trafficking in persons, or of vulnerabilities to trafficking and/or exploitation. Early identification should not be regarded as a one-step process. Experience from the field has shown that victims often do not come forward at first contact with assistance providers, much less at first contact with law enforcement authorities, especially when they have suffered severe forms of exploitation. Identification is possible when a safe space and a relationship of trust have been created to allow victims to share a traumatizing experience. It is therefore difficult to successfully identify victims of trafficking at arrival areas — such as disembarkation points of search and rescue operations, hotspots or airports — as well as in transit countries, due to little awareness of the indicators of trafficking in persons and of victims' needs among first responders, and an unwillingness from the potential victims themselves to be identified and registered in a country that is not their intended country of destination.

## IV. International and policy framework

10. Under the Palermo Protocol, States are required to prevent trafficking, to investigate and prosecute traffickers and to assist and protect trafficked persons with full respect for their human rights. A failure to identify a trafficked person correctly is likely to result in a further denial of that person's rights. In the Recommended Principles and Guidelines on Human Rights and Human Trafficking of the Office of the United Nations High Commissioner for Human Rights,[2] States are therefore called upon to ensure that such identification does take place. Similar obligations on the need to establish identification guidelines and procedures are also enshrined in regional conventions.[3]

11. The Convention on the Rights of the Child and its Optional Protocol on the sale of children, child prostitution and child pornography prohibit trafficking in children for any purpose. They call upon States to develop and adopt proactive identification measures for the rapid identification of trafficked children and to establish the presumption that, pending verification of their age, children should be treated as such.

12. In addition, the 1951 Convention relating to the Status of Refugees and its 1967 Protocol provide for specific protection guarantees for asylum seekers and refugees, which may include victims and potential victims of trafficking by prohibiting, inter alia, their return or expulsion to the territories where their lives or freedom would be threatened on account of their race, religion, nationality, political opinion or membership to a particular social group.[4] Moreover, the obligation of States to identify and protect victims of forced

[1] See A/HRC/29/38, para. 11.

[2] Available at www.ohchr.org/Documents/Publications/Traffickingen.pdf.

[3] ASEAN Convention against Trafficking in Persons Especially Women and Children and the Council of Europe Convention on Action against Trafficking in Human Beings.

[4] See Office of the United Nations High Commissioner for Refugees (UNHCR), Guidelines on International Protection No. 7 (2006), available at

labour was also clearly established in the Protocol to the International Labour Organization Forced Labour Convention, 1930 (No. 29). Under the Protocol, Member States are bound to take effective measures for the identification, release, protection, recovery and rehabilitation of all victims of forced or compulsory labour, as well as the provision of other forms of assistance and support.

# V. Early identification, referral and protection of victims or potential victims of trafficking in persons in mixed migration movements

## A. Identification of victims or potential victims of trafficking at first arrival areas

### 1. Identification during search and rescue operations and at disembarkation points

13. Since 2014, the Central Mediterranean route has been consistently considered as one of the deadliest for migrants and refugees. It is significant to note that, in terms of the proportion of rescues being undertaken in the Central Mediterranean area under the coordination of the Italian Maritime Rescue Coordination Centre, non-governmental organization (NGO) vessels rescued the most number of individuals.[5]

14. In the specific context of search and rescue operations, the role and activities of NGOs in the Mediterranean have expanded and become specialized since 2014. While attempting to reduce the number of deaths and to fill the gap left by European States in complying with their international obligations, NGOs strive to save lives, despite their scarcity of means. The pressure they face to sign a "code of conduct"[6] that de facto requires them to have a police presence on board their vessels, and the multiple attacks and defamation campaigns they have faced, have drastically circumscribed the activities of NGOs in the Mediterranean Sea, which is harmful for the protection of migrants.[7] The role of NGOs in search and rescue operations was further challenged in March 2018, when the *Open Arms*, a vessel owned by the Spanish NGO Proactiva, was seized by prosecutorial authorities in Catania and the NGO's staff investigated on suspicion of promoting irregular migration. The boat, however, was subsequently released by a judicial order, while the investigation into the NGO's activities continues.

15. While noting with appreciation the identification procedures established in cooperation between the International Organization for Migration (IOM), the police and a specialized team from the Prosecutor's Office in Catania after disembarkation, which led to better protection of sexually exploited children and a significant increase in prosecutions related to trafficking cases, the Special Rapporteur underlines that a human rights approach must be consistently applied across the whole spectrum of activities dealing with migration. This implies that humanitarian action aimed at rescuing lives should never be undermined or treated as promoting irregular migration.

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www.unhcr.org/publications/legal/443b626b2/guidelines-international-protection-7-application-article-1a2-1951-convention.html.

[5] See www.guardiacostiera.gov.it/en/Pages/search-and-rescue.aspx. According to the Italian Coastguard, the stakeholders involved in search and rescue operations in the Central Mediterranean area under the coordination of the Italian Maritime Rescue Coordination Centre include the Italian Coastguard, the Italian Navy, merchant vessels (commercial and NGO vessels), foreign military ships, EU NAVFOR MED Sophia Operation, and the Italian *Guardia di Finanza* and *Carabinieri*.

[6] For example, the Italian Code of Conduct for NGOs Undertaking Activities in Migrants' Rescue Operations at Sea 1 (2017). Available from www.avvenire.it/c/attualita/Documents/Codice%20ONG%20migranti%2028%20luglio%202017%20EN.pdf.

[7] Submission of Duke University International Human Rights Clinic, entitled "Search and Rescue Activities in the Mediterranean and Trafficking in Persons".

16. During her thematic visits and through the submissions received, the Special Rapporteur noted a general lack of dedicated procedures to identify and protect trafficking victims and potential victims at disembarkation points and in hotspots. She was particularly concerned about the fact that existing procedures were not primarily aimed at detecting vulnerabilities, including trafficking, but rather at detecting so-called "economic migrants", who were by consequence excluded from the international protection framework or any other protection scheme. The Special Rapporteur also noted a lack of awareness and understanding of logistical constraints, such as a lack of appropriate venues to carry out confidential interviews.

17. Furthermore, European efforts to reduce migration movements in the Central Mediterranean, and in particular the implementation of European Commission action plan on measures to support Italy, reduce pressure along the Central Mediterranean route and increase solidarity,[8] together with the signature of memorandums of understanding with countries of origin and transit, have had negative consequences on the protection of the rights of migrants and victims of trafficking in persons. The above action plan, which is primarily based on the strengthening of the Libyan coastguard, has proven to be problematic from a human rights perspective. Recent incidents during search and rescue operations involving, inter alia, the Libyan coastguard, have included threats to shoot at NGO vessels if they did not hand over rescued persons, adding to the proof of its inability to carry out such functions in line with international human rights standards. No migrant should, after rescue operations, be forcibly returned to Libya, where gross violations of human rights, including torture, sexual violence, trafficking and slavery, are systematically perpetrated in detention centres and "connection houses".[9] Finally, the Special Rapporteur is alarmed at the increasing tendency to place migration within the law enforcement paradigm, and to present migration-related measures as part of the fight against organized crime, including human trafficking, with little attention to human rights concerns. This is clearly reflected in the role played by FRONTEX through its "Operation Themis", which has been given an enhanced law enforcement focus and three times the available resources and personnel, although no new staff and resources are dedicated to the protection of fundamental rights and the promotion of a victim-centred approach to human trafficking.

### 2. Identification in hotspot areas

18. A flagship response to identification challenges at disembarkation or first arrival areas has been the implementation of a hotspot approach, especially in Europe's southern countries, such as Greece and Italy. This approach, recommended by the European Commission and endorsed by the European Council since May 2015,[10] provides locations where undocumented migrants can quickly be identified. However, documented practices have included forced fingerprinting in de facto detention centres — in violation of fundamental rights guarantees — and the subsequent separation of migrants for the purposes of processing asylum applications or to return them to their countries of origin.[11] The repressive nature of such identification, coupled with a screening process performed in

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[8] Available at http://europa.eu/rapid/press-release_IP-17-1882_en.htm. See also the joint communication of the European Commission to the European Parliament, entitled "Migration on the Central Mediterranean route: Managing flows, saving lives", available at http://www.refworld.org/docid/588ef8764.html.

[9] United Nations Support Mission in Libya, "*Detained and Dehumanised: Report on Human Rights Abuses against Migrants in Libya*" (2016), pp. 14–23, available at www.ohchr.org/Documents/Countries/LY/DetainedAndDehumanised_en.pdf.; and C. Healy and R. Forin, "What are the protection concerns for migrants and refugees in Libya?", International Centre for Migration Policy Development policy brief (2017).

[10] European Commission, "Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the regions: A European Agenda on Migration" (2015), p. 6. Available at https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/communication_on_the_european_agenda_on_migration_en.pdf.

[11] Amnesty International, *Hotspot Italy: How EU's flagship approach leads to violations of refugees and migrant rights* (2016), p. 5.

haste when migrants are still traumatized as a consequence of their perilous journey,[12] as well as severe overcrowding, lack of police protection, unhygienic conditions and abuse and exploitation, especially against women and children, have been widely reported and criticized in Greece and in Italy.[13]

19. It should be reiterated that identification in hotspots is mainly aimed at registering people in the Eurodac system through fingerprinting, rather than at identifying vulnerabilities, which are usually detected at a much later stage. In Greece and Italy, challenges in identifying vulnerabilities at the hotspot stage include: the de-prioritization of trafficking, in particular during large influx of migrants; the excessive profiling of certain types of victims, which risks excluding other potentially vulnerable groups from protection; a weak system of shelter allocation, which causes vulnerable groups to be subjected to a protracted stay in hotspots; a lack of reliable data in relation to identified victims; limited awareness among migrant communities about the unacceptability of incidents relating to gender-based violence and trafficking in human beings; impunity among perpetrators; infrequent police patrolling in residential areas of the hotspots at night; and a backlog of people not medically screened upon arrival.

20. A good practice identified in Italy concerns the presence of specialized agencies such as the Office of the United Nations High Commissioner for Refugees (UNHCR), IOM and the NGO Save the Children at disembarkation points and hotspots, working in cooperation with the police and the Prosecutor's Office to ensure the identification and referral of victims or possible victims of trafficking among the incoming migrants.

21. As regards Greek hotspots, a positive development has been the inclusion of trafficking in the standard operating procedures for the prevention of and response to sexual and gender-based violence, finalized in June 2017 and jointly agreed upon by the Ministry of Migration Policy, the Ministry of the Interior, international organizations and civil society.[14] However, weak sensitization of authorities and limited shelter capacity have resulted in a reluctance to report incidents of trafficking or gender-based violence to the appropriate services.[15]

22. In a context where the identification of trafficked or potentially trafficked persons is not a priority at disembarkation, the consequence is a very low number of victims and potential victims identified and protected at that stage, even in situations where anecdotal evidence and limited but significant research show that a high number of those travelling in mixed migration movements have been subjected to trafficking and exploitation during their journey and/or are at a high risk of being trafficked at their final destinations. Lack of identification of vulnerabilities and consequent referral to non-specialized reception centres can lead to further re-victimization and exposure to different forms of exploitation, such as recruitment for forced prostitution/sex work or labour exploitation.[16]

### 3. Identification at airports

23. Airports have a role in the identification of victims or potential victims of trafficking arriving in a country by plane, and especially children. According to FRONTEX and the European Union Agency for Law Enforcement Cooperation (Europol), airports are considered to be the likeliest place to find children being trafficked or smuggled into the

[12] Ibid. pp. 5–7. See also Oxfam, "Hotspot: Rights Denied", Briefing Paper (May 2016).

[13] While the Special Rapporteur welcomes efforts by FRONTEX to develop individual complaint mechanisms in cases of violations of fundamental rights, this is limited to FRONTEX activities, and doubts have been raised in relation to the effective widespread dissemination among vulnerable groups and effective understanding of the tool, given also the lack of complaints filed in this regard, while it has been widely documented that violations have occurred on a regular basis, especially in hotspot areas. See also www.hrw.org/news/2016/05/19/greece-refugee-hotspots-unsafe-unsanitary.

[14] Submission of Fundamental Rights Agency.

[15] C. Healy and R. Forin, "Trafficking along migration routes to Europe: Bridging the gap between migration, asylum and anti-trafficking", International Centre for Migration Policy Development policy brief (May 2018).

[16] Organization for Security and Cooperation in Europe (OSCE), *From Reception to Recognition: Identifying and Protecting Human Trafficking Victims in Mixed Migration Flows* (2017), p. 30.

European Union and are used by traffickers and smugglers at peak times when the pressure at passport control is the highest.[17] As such, they have benefited from several initiatives, training and campaigns aimed at the transport sector.

24. The Office of the United Nations High Commissioner for Human Rights (OHCHR) and the International Civil Aviation Organization have developed guidelines for airlines to train cabin crew members to identify and report on trafficked individuals.[18] In addition, the United Nations Office on Drugs and Crime (UNODC) initiative #BeAwareOfTheSigns, implemented in Mexico, has empowered personnel in contact with the airline sector, including senior management, airline staff, airport managers, baggage handlers, information employees, flight crew, migration and customs officials, duty-free sales people and travellers in general, by providing information and indicators to detect possible situations of human trafficking.[19] Moreover, the UNODC Blue Heart and #AQUIESTOY campaign promotes the detection and prevention of trafficking in partnership with the leading airline in Mexico. Another example of training is the VEGA Handbook on children at airports, developed by FRONTEX. In Nigeria, airport officials in Abuja together with the National Agency for the Prohibition of Trafficking in Persons identified 14 potential victims of trafficking on their way to Saudi Arabia and had their traffickers arrested.[20]

25. However, concerns remain in relation to the need to strengthen the institutional framework for identifying victims of trafficking, especially in relation to unaccompanied and separated children, as noted by UNODC while monitoring immigration points during visits to border territories with high rates of migration, including in El Dorado international airport in Bogota. The lack of a clearly articulated response in relation to cases of unaccompanied minors and victims of trafficking, and the lack of registration of such cases and of technical expertise, have been identified as the main challenges.[21] Another factor limiting border officials' capacity to identify potential victims is the pressure to keep queues at airports and other ports of entry moving.[22] In addition, the increased use of electronic passport gates at airports means that many passengers do not come into direct contact with border officials.

### 4. Identification at land border control

26. Many challenges have been identified at land border control, including: invisible and porous borders; language and cultural barriers; a lack of education; fear of reporting to relevant authorities; economic difficulties; lack of adequate settings to conduct interviews; lack of resources and logistics, for instance transport and child support; the presence of armed groups and other criminal organizations; and a lack of standardized procedures and expertise from relevant authorities.

27. For example, the porous nature of the borders between Colombia and Brazil, Ecuador and the Bolivarian Republic of Venezuela, together with the lack of coordination among the relevant administrative authorities, hinders the identification and assistance of unaccompanied and separated children at risk of sexual or labour exploitation, an increasing concern in the region. Cases of trafficking of children from Colombia to Brazil and Peru for sexual exploitation have also been reported, and identification concerns have been raised regarding issues such as the cultural acceptance of child marriage among some communities and professional prejudices or lack of response from competent authorities in child protection.[23] Along Central American migratory routes and at land borders, similar concerns have been raised regarding the early detection of such cases owing to the invisibility of borders, a lack of coordination between different countries' border control officials or the high rotation among border control staff, which contribute to the difficulties

[17] FRONTEX, *VEGA Handbook: Children at Airports*, p. 23. Available at https://euagenda.eu/publications/vega-handbook-children-at-airports.

[18] See www.icao.int/safety/airnavigation/OPS/CabinSafety/Documents/Cir.352.alltext.en.pdf

[19] Submission of UNODC.

[20] See www.today.ng/news/nigeria/79507/human-trafficking-naptip-rescues-14-victims-abuja-airport.

[21] Submission of UNODC.

[22] Submission of FLEX.

[23] Submission of UNODC.

in creating multidisciplinary and transnational teams despite implemented efforts on training and capacity-building at the regional, bilateral or national levels.[24]

28. Similarly, serious concerns have arisen in relation to the increasing number of trafficking cases of Rohingya refugees in Bangladesh and neighbouring countries.[25] For such refugees, the clandestine nature of their journey, the often unscrupulous and corrupt conduct of their facilitators and collaborators and the extent to which some States will go to prevent their departure, transit or arrival, all operate to create or exacerbate opportunities for traffickers, who prey on their precarious situation. For instance, Rohingya from Myanmar typically embark on maritime and overland journeys, often via Thailand, to reach Malaysia irregularly. Initially smuggled across borders, some are subsequently trafficked to work on fishing boats or palm oil plantations for labour exploitation.[26]

29. The Special Rapporteur also received allegations in relation to a pattern of arrests and detentions of Bangladeshi and Rohingya women and girls for the sole purpose of them being undocumented in the area of West Bengal in India, at the border with Bangladesh. In that regard, appropriate investigations and early identification had to be undertaken to determine whether they had entered the territory of India by means of coercion, abduction, fraud, deception, abuse of power or a position of vulnerability, for the purpose of exploitation.

## B. Identification in transit countries

30. The recent migration situation into Europe has primarily involved an influx of Syrians, Iraqis and Afghans, many of whom moved through the Balkans (often referred to as "the Balkan route") in their attempt to reach Europe. Along the way, and at various stages of their journeys and flights, many of those migrants and refugees are exposed to different risks, vulnerabilities and exploitation, including, in some cases, human trafficking.[27]

31. In Central America, migrants attempting to reach the United States of America, have been forced to rely upon increasingly dangerous routes, often ending up in the hands of smugglers and traffickers. Smuggled migrants are vulnerable to trafficking, including mistreatment, sexual exploitation, threats, intimidations and restriction of their freedom of movement. Most overland migration involves migrants from El Salvador, Guatemala and Honduras transiting through Mexico to the United States.[28] IOM Mexico noted that trafficking victims are often identified at the moment they are freed from exploitation, either through the payment of ransom sums, when they manage to escape by their own means or, in exceptional circumstances, when traffickers free or abandon them.

32. Similarly, the journey of sub-Saharan African women and unaccompanied children is particularly hazardous. Thousands of such women and children have disappeared, presumably abducted for purposes of trafficking-related exploitation. Somali and Sudanese refugees and asylum seekers fleeing conflict, including numerous unaccompanied children, have been kidnapped or lured from refugee camps or while travelling, sold and subsequently held captive in Libya or in the Sinai desert for the purpose of exploitation through extortion.[29]

33. The main challenges common to all transit countries relate to a recurrent confusion between trafficking and smuggling, and an inadequate legal framework and standard

[24] Ibid.

[25] See A/HRC/32/18, para. 11.

[26] See A/HRC/29/38/Add.1, para. 19, and A/HRC/32/41, para. 24.

[27] FAFO, *Vulnerability and exploitation along the Balkan route: Identifying victims of human trafficking in Serbia* (Oslo, 2017), available at www.fafo.no/images/pub/2017/20620.pdf. Also Healy and Forin, "Trafficking along migration routes".

[28] See UNODC, "Smuggling of Migrants from the Northern Triangle to the United States", available at www.unodc.org/documents/toc/Reports/TOCTASouthAmerica/English/TOCTA_CACaribb_migrantsmuggling_to_US.pdf.

[29] See A/HRC/32/41 para. 21.

operating procedures or their correct implementation, which contribute to the non-identification and misidentification of victims and possible victims of trafficking in transit to their destination.[30] The varying knowledge concerning counter-trafficking among immigration case officers and other authorities, health-care providers and NGOs, and the lack of communication between stakeholders, further impact the practical implementation of the activities envisaged in the standard operating procedures.

34. Moreover, refugees and migrants in transit countries are often not willing to report their exploitation, as their priority is to continue their journey to their intended country of destination. Those in irregular migration situations have limited avenues to seek redress in the event that exploitation occurs, because of threats to them or their family members from traffickers. The risk of becoming stranded, arrested, detained or deported also makes them reluctant to complain or seek the support of the relevant authorities or other stakeholders.[31]

35. These challenges are further exacerbated by the hostile political climate towards migrants, including asylum seekers and refugees, and by the fact that the identification of trafficked persons is not perceived as a protection priority in the context of mixed migration.[32] As migrants find themselves stranded in transit countries owing to a lack of financial means and a lack of safe and legal ways to continue the journey to their intended country of destination, or in destination countries with no access to the regular labour market, often the only option available to them is to resort to traffickers or dubious intermediaries, who offer exploitative working conditions.

36. Specific challenges have been reported in relation to individual regions. In many European countries, screening and identification procedures/activities remain insufficient and incomprehensive. Moreover, few countries seem to have specific indicators on vulnerability for the target group in place. Early identification among migrants and refugees is also not mandatory or not part of formal procedures.[33] Other challenges include a lack of facilities, the fact that temporary residence permits for trafficked persons — and consequently protection and assistance measures — are linked to police investigation and the legal qualification of the crime. Other factors contributing to misidentification include the disconnect between asylum and migration actors and procedures, on the one hand, and anti-trafficking actors and procedures, on the other; receiving a negative decision in the asylum or family reunification procedure; long waiting periods within the asylum procedure; having an undocumented immigration status; uncertain legal status during the journey; and delays in the appointment of a guardian, and/or guardians' insufficient capacity to appropriately care specifically for unaccompanied and separated children.[34]

37. In El Salvador, some of the challenges related to lack of identification, especially in relation to cases of forced labour and labour exploitation, stem from a sort of "normalization" of conditions of exploitation of the working class, especially the most vulnerable ones, such as indigenous groups, women, children and migrants, who are less keen to report cases of exploitation for fear of reprisals.[35]

38. Lack of identification of victims or potential victims of trafficking is also linked to the use of profiling, which tends to categorize women and children as victims, excluding men from protection measures. For example, in Lebanon, Syrian single male refugees are disproportionately targeted by both governmental authorities and host communities because they are perceived as a security threat. They therefore rely upon negative coping strategies to maintain their immediate safety, which exposes them to exploitation and abuse, especially in the labour market. Both in cases of threats to personal safety and exploitation

[30] Healy and Forin, "Trafficking along migration routes".
[31] Ibid., and submission of La Strada International.
[32] Healy and Forin, "Trafficking along migration routes".
[33] Submission of La Strada International.
[34] Healy and Forin, "Trafficking along migration routes".
[35] IOM, "Trata de Personas con fines de explotacion laboral en Centro America: El Salvador" (2011), p. 29. Available at http://plataformadeaprendizaje.iom.int/pluginfile.php/12468/mod_resource/content/11/Trata_de_personas_el_salvador.pdf.

incidents, male refugees reported not seeking help from authorities owing to lack of confidence that justice would be afforded to them.[36]

39. Generally, the link between migrants' vulnerabilities to labour exploitation and trafficking has not been acknowledged. On the contrary, it is ignored or culturally accepted, such as the reported cases of exploitation of migrant workers in the agricultural sector in Southern Europe, and in other informal sectors where migrants, and especially irregular migrants, are more exposed to exploitative conditions, including the agriculture, construction and textile industries. In those sectors, women are also targets for labour exploitation. Indeed, situations have also been reported in which women are exploited from a labour perspective in fields during the day, then exploited sexually during the night.[37] In addition, the business practices of recruitment intermediaries, who are largely unregulated or informal, such as the charging of fees to migrant workers or the arrangement of unclear and informal working arrangements, are still largely viewed as common rather than abusive conditions of work.

## C. Identification in countries of destination

40. Migrants in vulnerable situations in countries of destination remain of concern to assistance providers. Lack of protection, inadequate housing solutions and limited or lack of legal residence or employment are some of the issues raised and which impact on the identification of victims and potential victims of trafficking from among migrants. This lack of protection or assistance resources continues to increase the risk of migrants to exploitation, amounting in some cases to trafficking in persons.[38]

41. Concerning the identification of children, child protection services are often not trained to identify and establish a specific protection programme for child victims of trafficking. As a consequence, adults accompanying children are identified as family members or guardians, while in reality may be linked to the traffickers, or children may be placed in centres with little protection, to be picked up by a trafficker at a later stage.[39]

42. In addition, a lack of adequate response in the country of destination increases the risk that refugees and migrants will be returned to the first country of arrival or their country of origin. As a consequence, people on the move often prefer to remain in an irregular situation rather than being identified and therefore registered through a formal procedure.[40] Meanwhile, asylum procedures offer an opportunity to detect indications of trafficking, in addition to or as an alternative to grounds for international protection, eventually leading to a referral to services on the grounds of trafficking or risk of trafficking. Therefore, following existing good practices, it is absolutely necessary to train asylum staff to detect trafficking indications and cooperate with NGO service providers.[41]

43. As noted above, refugees and migrants are not likely to discuss their situation during first arrival interviews or in their encounters with different services along their journey through transit countries. In many cases, experiences of exploitation and trafficking in persons will only be shared at a later stage of the journey and not necessarily on arrival at the destination country. Such information is more likely to be shared in the context of a long-established relationship with a service provider that might not be originally mandated to perform identification, for example, health providers or protection actors. An exclusive focus on identification by border or other front-line officials might not provide the desired results. On the contrary, it would be more beneficial to train and raise awareness among a

[36] International Rescue Committee, "Vulnerability assessment of Syrian Refugee Men in Lebanon" (2016). Available at www.rescue.org/sites/default/files/document/464/irclebanonrefugeemensvulnerabilityassessment.pdf.

[37] Submission of Proxima NGO.

[38] Submission of La Strada International.

[39] Submission of Swedish Platform Civil Society against Human Trafficking.

[40] Ibid.

[41] See for example, www.unhcr.it/wp-content/uploads/2018/02/Linee-Guida-identificazione-vittime-di-tratta.pdf.

larger group of social services professionals, including medical staff, social workers, or other civil society actors, as well as local communities, who enter into contact with migrants in different contexts and are in a position to establish a safe space and relationship of trust over time with potential victims of trafficking.[42]

44. Generally, the need for training is a major concern in the identification of victims of trafficking in countries of destination, even when there are mechanisms or procedures that include all relevant stakeholders. A lack of appropriate training is also a consequence of insufficient resources allocated to such services, which is in turn a consequence of political will, which is focused instead on countering migration.[43] Other groups identified in need of training include law enforcement, border police, asylum caseworkers, immigration services, refugee counselling centres, specialized migration centres, youth welfare offices, labour inspectors, immigration services, health support organizations, reception centres, migrant detention centres, legal services, municipal officers, labour authorities, migrant organizations, airport personnel, other transport providers and traditional, religious and community leaders in countries of origin.[44]

45. As regards the judiciary, organizations that provide assistance have also raised concerns about the subtle categorization of certain indicators in labour abuse or exploitative conditions of work as cases of trafficking in persons for labour exploitation. A good practice involves the collaboration between assistance organizations and prosecution offices, through exchanges including public hearings, which can raise the level of awareness of the judiciary. As a result, prosecutorial and judicial authorities are more attentive to relevant indicators in the subsequent cases, which can increase the number of cases reviewed with successful outcomes for victims.[45]

46. Feedback from destination regions shows a need to strengthen the ability of multidisciplinary teams to identify vulnerabilities and assistance needs. For example, in the identification of cases of labour exploitation, this approach implies the reinforcement of labour inspectorates and the inclusion of a trafficking dimension within service providers working on migrant worker protection.

47. To increase the identification of trafficking for labour exploitation, the enforcement of labour standards should be a key element in anti-trafficking policy, in addition to the evaluation of the indicators used to identify practices such as charging recruitment fees to migrant workers, the absence of contracts or the retention of passports and other personal documents, and ensure such practices are included as indicators in identification procedures. Often, trafficking for labour exploitation is linked to small labour abuses, and labour inspectors are better placed to provide early warnings on labour abuses that can mask grave violations, such as forced labour or trafficking in persons. Inspections should be strengthened and proactive, as the hidden nature of labour exploitation often goes underreported owing to a number of barriers faced by migrant workers, including fear of retaliation, linguistic barriers, lack of information about their rights, insecure status, etc.[46] Proactive labour inspection must not be limited to working sites but also include recruitment agents. A good example is the licensing scheme operated in the United Kingdom of Great Britain and Northern Ireland by the Gangmasters and Labour Abuse Authority, which regulates labour providers in the agriculture, horticulture and shellfish gathering sectors. That organization's licensing standards reflect key forced labour indicators and are monitored and enforced through proactive inspections. Its mandate has been expanded by the Immigration Act 2016 to cover the investigation of labour exploitation offences.[47]

[42] Submissions of La Strada International and FLEX.

[43] Submission of La Strada International.

[44] Ibid. See also ECOWAS Commission, "Annual Synthesis Report on Trafficking in Persons in West Africa 2016" (2017).

[45] Submission of Ruelle.

[46] Submission of FLEX. See also www.icmpd.org/fileadmin/user_upload/WP11_PolicyBrief_LabourInspection_FINAL.pdf.

[47] Submission of FLEX.

48. The need to separate labour inspection from immigration control is also paramount in order to create a trustworthy space for migrant workers. Such a firewall has been advocated since 2014 by the Special Rapporteur on the human rights of migrants because migrant workers in an irregular status or precarious legal status are reluctant to report unless there is a firewall preventing labour inspectors from communicating information on potential irregularities in immigration status to immigration enforcement.

49. A good practice was examined while visiting Portugal in preparation of the present report. The Special Rapporteur on trafficking in persons found to be exemplary the country's practice of adapting the cooperation mechanism procedures to the legislative and institutional changes that had occurred since 2008. The National Referral Mechanism, revised in 2014 by the Portuguese working group that coordinated the activities of the national action plan, ensured that newly emerging forms of trafficking for the purpose of labour exploitation, forced begging and criminal activities were included with a view to also addressing the increased migrant-related trafficking in the country, which is a transit and destination for trafficking.

50. The origin of the Portuguese success is twofold. On the one hand, identification and referral is based on the work of regional multidisciplinary teams whose composition can be adapted to the circumstances of the case and type of exploitation, and which includes a wide range of actors, such as social workers and psychologists. In addition, those teams have also developed regional networks to help victims, including relevant public bodies and civil society actors. On the other hand, these efforts have been strengthened by a programme for the integration of identified victims, including access to the labour market. However, this approach has been used in a context of limited movement of people, as compared with other regions or countries, and its scalability and adaptability to deal with mixed migration movements and higher numbers of arrivals should be tested.

## D. Impact of return procedures in identification of victims and potential victims of trafficking in persons

51. Within the current international protection system, those persons whose applications for international protection have been refused are subject to return to their country of origin. At the European Union level, transfer to the first European Union country of arrival can also happen even before a determination of their cases have been made, based on the Dublin III Regulation.[48] In that case, the risks of non-detection of victims and potential victims of trafficking increase as many countries do not have in place procedures for their proactive detection, especially when the application of Dublin criteria is assessed before a first interview takes place with the applicant for international protection.

52. According to feedback received, the risk for victims of trafficking of exposure to reprisals and re-victimization increases as they are likely to be contacted again by the trafficking network when returned to the first European Union country of arrival. Those risks are in principle not taken into consideration when determining which European Union member State is responsible for examining the application for international protection.[49] Submitted information also raises general concerns on the lack of training of officials to appreciate these dangers and safety concerns. Active screening for indicators of trafficking is on many occasions not performed under the assumption that the appropriate screening has already taken place at an earlier stage of the process, before the Dublin procedure is applied.[50] Even if cases of trafficking are identified, there is a lack of clear guidance within the social assistance system when a Dublin transfer has nevertheless been processed.[51]

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[48] Available from https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32013R0604. See also www.icmpd.org/fileadmin/user_upload/Policy_Brief_Relocation-20062017_FINAL.pdf.

[49] Submission of Swedish Platform Civil Society against Human Trafficking.

[50] European Migration network, "Synthesis report. Identification of victims of trafficking in human beings in international protection and forced return procedures" (March 2014), p. 7. Available at www.refworld.org/docid/5326b50a4.html. See also Group of Experts on Action against Trafficking in Human Beings, "Fifth General Report on GRETA's activities" (2015), p. 34. Available at

53. Generally, the treatment of victims of trafficking deported to their countries of origin is of concern. Victims are stigmatized, discriminated against, and some suffer from mental health issues, which hinder them from communicating and trusting other people.[52] The human rights impact of returns, especially mass returns, cannot be underestimated. For instance, the deportation from Libya of 3,480 young Nigerians, mostly girls and women, following the shocking video on slavery-trade markets, reveals that some victims of human trafficking encounter considerable obstacles when they return home — on their arrival at the airport, they are seen as undignified persons and isolated from the community due to the fact that they were involved in prostitution/sex work.[53]

54. European States are de facto delegating returns of migrants to FRONTEX, whose budget has recently almost more than doubled specifically with regards to the implementation of return procedures. FRONTEX implements this task, inter alia, by taking into consideration the principle of non-refoulement throughout its activities, not allowing returns of unaccompanied minors and providing training on fundamental rights to the teams in charge of monitoring forced returns. However, it is alarming that States or regional institutions lack clear guidelines in relation to the forced returns of potential victims of trafficking that they might have failed to identify, considering also the rapidity and inadequacy of identification during large mixed migration movements. It is even more alarming that States are delegating the implementation of such procedures to a regional institution such as FRONTEX, which cannot interfere in the decision-making over individual cases. As a consequence, the final decision stays with national authorities, which risks nullifying the efforts made by FRONTEX specialized teams to integrate a human rights component.

55. In other regions of the world, for example in South-East Asia, forced returns of irregular migrants to countries of origin show similar challenges. High numbers of suspected victims of trafficking are potentially present within forced return programmes, but are not identified owing to a lack of appropriate mechanisms for screening indicators of trafficking.[54]

## E. Role of referral mechanisms in early identification and assistance to victims of trafficking

### Cooperation mechanisms for referral of victims of trafficking in persons

56. States use various means to fulfil their obligations to protect and promote the human rights of trafficked persons, including promulgating anti-trafficking legislations and policies such as national action plans, and establishing multidisciplinary coordinating institutions and frameworks such as national referral mechanisms and standard operating procedures to implement the Palermo Protocol and other anti-trafficking regional instruments. While these cooperation mechanisms are designed to provide an effective way to refer trafficked persons to comprehensive services in coordinated efforts between State institutions and civil society organizations, they are not exempt of shortcomings in their practical application. In the specific context of mixed migration movements, despite the prominent role played by international organizations in identification, a lack of specific international cooperation mechanisms hinders the referral of victims to local assistance

https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806309 3c.

[51] Submissions of Swedish Platform Civil Society against Human Trafficking and La Strada International.

[52] Austrian Centre for Country of Origin and Asylum Research and Documentation, *Nigeria: COI Compilation on Human Trafficking* (December 2017), p. 36. Available at www.refworld.org/pdfid/5a79c7114.pdf.

[53] Ibid. p. 32.

[54] ASEAN, *Regional review on Laws, Policies and Practices within ASEAN relating to the Identification, Management and Treatment of Victims of Trafficking especially Women and Children* (2016), p. 134. Available at http://asean.org/storage/2016/09/ACWC-Regional-Review.pdf.

providers.[55] Moreover, cooperation mechanisms are often based on police operations and assistance is only triggered by the official identification by law enforcement officials of a victim of trafficking in persons, thus creating a system shaped around a criminal investigation instead of the rights and needs of victims of trafficking.

57. The question then is what specific roles do cooperation mechanisms have in the context of early identification and assistance of victims of trafficking from among the large groups involved in the mixed migration context. In that regard, the Special Rapporteur noted with appreciation during her visit to Italy the combined use of the national anti-trafficking framework and the refugee protection system to complement each other and increase the protection of rights in cases of large mixed migration movements.[56] However, referral from asylum territorial commissions and from IOM at disembarkation points and hotspots to the anti-trafficking national network, and the subsequent placement of victims in specialized shelters, depends on the limited places for vulnerable groups, such as victims of trafficking and unaccompanied and separated children. As a result, those vulnerable groups end up staying for prolonged periods of time in the hotspots, as specialized shelter capacity remains limited.[57]

58. Moreover, when there is a large-scale arrival of people, it has been noted that cooperation mechanisms are often not involved at an early stage to identify victims of trafficking for a variety of reasons.[58] In European Union hotspots, migrant reception centres and other structures, a lack of understanding that trafficking can and often does happen in the context of mixed migration movements leads to the de-prioritization of trafficking issues. As a consequence, victims and potential victims of trafficking are not identified or misidentified and are not provided with effective protection and remedies.

59. Early assistance to identified victims of trafficking is even more difficult in States that did not have mechanisms or guidelines for their referral prior to large-scale arrivals. In such cases, for migrants who are not in camps or migration facilities, the chances of identification and assistance are even slimmer. For instance, in Jordan, the detection of trafficked persons from among the Syrian refugees outside camps is negligible.[59]

60. In order to address this problem, the Special Rapporteur echoes the views of practitioners and civil society organizations, namely, that early identification should not only focus on entry points to the country, like border points or transit centres, but also at locations where migrants and refugees might live or gather and can be reached. Identification is not necessarily a one-step process, but might take a longer time.[60]

**Cooperation in cross-border trafficking cases**

61. Cooperation in cross-border trafficking cases involve the protection of victims or possible victims of trafficking in more than two countries.

62. In many European countries, this also means exchanging practices and learning how to legally challenge the transfer of victims of trafficking under Dublin procedures when this is done without consideration for the risks of re-trafficking and without the necessary and required safeguards.[61]

63. Within the Association of Southeast Asian Nations (ASEAN) region,[62] the high levels of cross-border trafficking raise practical questions about recognition by one State of

[55] IOM, "National Referral Mechanisms for Victims of Human Trafficking: Deficiencies and Future Development" (2017), p. 4. Available at https://publications.iom.int/system/files/pdf/national_referral_mechanisms.pdf.

[56] See www.unhcr.it/wp-content/uploads/2018/02/Linee-Guida-identificazione-vittime-di-tratta.pdf.

[57] Dutch Council for Refugees, "*The implementation of hotspot in Italy and Greece: A study*", p. 16. Available at www.ecre.org/wp-content/uploads/2016/12/HOTSPOTS-Report-5.12.2016.pdf.

[58] Healy and Forin, "Trafficking along migration routes"; and ASEAN, *Regional review*, pp. 44 and 63.

[59] See A/HRC/32/41/Add.1.

[60] Submission of La Strada International.

[61] Ibid.

[62] ASEAN, *Regional review on Laws*, p. 62.

victim status granted by another State.[63] Other referral and cooperation issues in transnational referrals[64] include: unassisted return, which can be stressful for trafficked persons, particularly if they fear retribution by their exploiter(s); inadequate referral of cases, which can result in people who are identified as trafficking victims in the destination country remaining unidentified for assistance upon their return home; broken links with established assistance services if authorities from one country return victims to their countries of origin; and a lack of cooperative case planning and management while victims of trafficking are abroad, meaning that they do not always receive a continuity of care upon their return home.

64. In Central America, regional coordination mechanisms — through the regional mechanism against trafficking and smuggling, the Regional Conference on Migration, the Caribbean Council and the Central American Council of Public Ministries — have developed regional and national protocols on this issue to follow up on human trafficking and migration issues in the region. The UNODC Regional Office for Central America and the Caribbean in Panama cooperates with these mechanisms through the preparation of guidelines on information-sharing on trafficking in border areas, addressed to Costa Rica, Guatemala, Honduras and Panama. It also performs bilateral and regional capacity-building activities and information exchanges on migratory movements among those countries, on regular and irregular migratory paths, with the objective of better identifying vulnerabilities and planning a coordinated response.

# VI. Conclusions and recommendations

## A. Conclusions

65. **Current approaches to migration and the identification of victims and potential victims of trafficking are taking place in a context in which poisonous political discourse is leading many countries to adopt anti-migration and even racist positions. In these situations, the main concern of many Governments, including many European Governments, is to drastically limit or even block migration movements, with little attention paid to the human rights implications of such policies, and offering no significant solutions, so far, in terms of shared responsibility with countries of first arrival.**

66. **Today, some protection channels are partially in place, namely, for asylum and international protection, child protection, assistance measures for trafficked persons, and in very limited terms for smuggled persons. Yet, current international protection systems, screening procedures and national cooperation mechanisms have difficulties in adapting to the complex realities of today's large mixed movements of people arriving through a single entry point at the same time.**

67. **More specifically, procedures of accurate and early screening based on individual interviews and assessment carried out in a friendly setting, preferably by trained social workers, as well as mechanisms for referral to appropriate institutions, are not systematically established in the places of first arrival of the large influx of refugees and migrants. While there has been promising work in refining indicators of vulnerabilities to trafficking to facilitate detection and referral at an early stage upon arrival, such as the surveys developed by IOM in the Central and Eastern Mediterranean route,[65] there are also concerns over the use of specific profiling techniques in assistance and protection mechanisms and standardized sets of indicators, which might not be comprehensive and might lose sight of other types of vulnerabilities not specifically listed. Excessive profiling can further stigmatize target**

[63] Ibid., p. 44.

[64] Ibid., p. 63.

[65] IOM, "Flow monitoring surveys: The human trafficking and other exploitative practices indication survey" (2017), available at http://migration.iom.int/docs/Analysis_Flow_Monitoring_and_Human_Trafficking_Surveys_in_the_Mediterranean_and_Beyond_26_April_2017.pdf.

groups and has not proven effective, as a very modest number of victims have been identified and protected in countries of first arrival.

68. In addition, officials in the places of first arrival often lack the capacity to identify quickly and at an early stage factual indicators of vulnerabilities, including to trafficking, and assess the credibility of the narrative of the person. Such officials should be trained to interview individuals using an appropriate and human-rights based methodology, check the credibility of their narrative and identify the most appropriate protection channel without infringing the right to apply for asylum or other forms of international protection. On the other hand, identification of trafficked persons and persons at risk from among asylum seekers should be integrated into asylum procedures.

69. Finally, the Special Rapporteur wishes to raise an alarm about the fact that results have been very modest regarding identification and assistance of trafficking victims and potential victims in the context of mixed migration movements. Therefore, an innovative model is needed, not primarily based on police operations or the decision-making of immigration authorities, but rather based on the assessment of every individual's background and personal conditions, in cooperation with civil society organizations. This entails the consideration of new protection schemes that should be focused not only on early identification of trafficking victims but also on a mechanism for the early referral and protection of persons in vulnerable situations. Refugees, asylum seekers and migrants in vulnerable situations are always at a high risk of falling prey to traffickers.

## B. Recommendations

70. In view of States' legal responsibility to identify, protect and assist victims and possible victims of trafficking in persons, especially women and children, in all circumstances, including in the context of mixed migration flows, the Special Rapporteur offers the recommendations below.

71. In relation to the protection of refugees, asylum seekers and migrants in vulnerable situations, including victims and potential victims of trafficking in persons, States should:

(a) Ensure that human rights are at the centre of efforts to address migration in all its phases, including responses to large and mixed movements, through the ratification and implementation of international and regional human rights instruments;

(b) Establish safe and legal migration channels, respecting the principle of non-refoulement and ensuring that migrants have access to the regular labour market in the host country, in cooperation with United Nations agencies and programmes and international organizations;

(c) Ensure that appropriate laws and procedures are in place to enable actors to protect and assist refugees and migrants, and review and suspend, amend or repeal any laws or other measures that have a negative or disproportionate impact on the human rights of refugees and migrants;

(d) Ensure that national legal frameworks and policies as well as bilateral/multilateral cooperation uphold and strengthen the effectiveness of the search and rescue regime, in accordance with international law and standards. Ensure that organizations and individuals who rescue or assist people on the move are not criminalized or otherwise punished for doing so. Ensure that people who are rescued at sea or land are not returned to a country where they may be at risk of trafficking or other human rights violations.

72. The Special Rapporteur also offers the recommendations below to improve identification of victims and potential victims of trafficking on arrival, transit or destination.

73. **With regard to identification or screening tools, procedures and facilities, States, international organizations and civil society should:**

(a) **Prioritize and establish dedicated and standardized procedures for the identification of indicators of vulnerability and assistance of victims and potential victims of trafficking through referral to protection services in areas of arrival of large influxes of people, in addition to international protection and child protection schemes. Implement individual screening and assessment procedures as soon as possible after migrants arrive. Ensure that experts in identification are present at borders to complete human rights-based screenings and referrals. Provide training to relevant border, migration and asylum authorities on the use of these indicators and referral measures;**

(b) **Develop standard screening forms that are sufficiently detailed to allow first responders to identify migrants in vulnerable situations early on and refer them to appropriate channels. Map all stakeholders likely to come into contact with the migrant population, especially health providers, migrant community leaders, social workers, labour inspectors and asylum caseworkers and ensure they are trained in identification and screening tools and coordination mechanisms in place for identification and referral;**

(c) **Expand current indicators used in the identification procedures of trafficking in persons to address profiling and systematically include indicators of migrants' situations of vulnerabilities that can lead to a risk of trafficking, based on the experience acquired by national agencies, international organizations and civil society. Such indicators should take into account risks occurring during or as a result of the migratory journey and/or at destination, such as those stemming from lack of financial resources, irregular status, use of migrant smuggling services, torture and extortion, sexual violence and sexual and labour exploitation;**

(d) **Facilitate victims' identification during search and rescue operations and at disembarkation points, by creating safe and confidential spaces to carry out individual interviews. Such interviews should be performed by trained staff and interpreters who can promptly assess indicators of vulnerability and provide adequate support, also in order to separate potential victims from traffickers;**

(e) **Allocate sufficient resources to ensure that places for arrival, disembarkation, reception centres and settings meet human rights standards for reception and assistance in accordance with the OHCHR and Global Migration Group Principles and Guidelines on the human rights protection of migrants in vulnerable situations;**[66]

(f) **Ensure that women, girls, men and boys vulnerable to sexual and/or labour exploitation are promptly identified and referred to gender-sensitive services on arrival, and in transit and destination countries;**

(g) **In transit and destination countries, establish a clear firewall between labour inspection, immigration control and law enforcement. Ensure labour inspection is proactive and adequately resourced;**

(h) **Develop adequate, human rights-based and gender-sensitive information material available in a language migrants understand, to ensure access to specialized services.**

74. **With regard to children, States, international organizations and civil society should:**

(a) **Ensure that children, especially unaccompanied and separated children, are promptly identified, registered and referred to the child protection system; and ensure that such identification procedures take into account the age, gender and maturity of the child, as well as the circumstances of his or her journey;**

[66] Available at www.ohchr.org/Documents/Issues/Migration/PrinciplesAndGuidelines.pdf.

(b) **Adopt proactive protection measures based on the best interest of the child in line with international law, as well as Committee on the Rights of the Child general comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, including by appointing properly trained and resourced guardians and establishing measures for protection and transition to adulthood;**

(c) **Ensure that a child-sensitive age assessment is performed only in cases of doubt regarding the child's age. In case of uncertainty, the person should be considered a child.**

75. **In order to improve the identification of trafficked children or those at risk at airports and sea and land border crossings, States should enhance coordination among law enforcement officials and entities such as airline staff, other transport providers, child protection services and those who work with other vulnerable groups.**

76. **With regard to the identification of victims and potential victims from among the asylum-seeking population States should:**

(a) **Integrate identification of trafficking victims and potential victims into asylum procedures, including in the context of accelerated procedures;**

(b) **In accordance with the UNHCR Guidelines on International Protection No. 7, consider trafficking in the country of origin, destination or transit, and the risk of trafficking, re-trafficking or reprisals from traffickers, as grounds to be granted international protection;**

(c) **Develop regular coordination between the asylum procedures and the trafficking protection systems in order to ensure that people identified as at risk of trafficking during asylum procedures are referred to the trafficking protection system and — when both grounds are recognized — have access to both refugee status and protection as victims or potential victims of trafficking.**

77. **With regard to the identification of victims and potential victims in return procedures, States should ensure that risks of trafficking and re-trafficking are adequately evaluated when a decision is made on return, including if the person is returned to the first country of arrival or a third country, and ensure that no person, regardless of their status, is returned to a place where there are substantial grounds to believe that they would be at risk of being subject to torture or other cruel, inhuman, or degrading treatment or punishment, or other serious human rights violations, including a risk of being trafficked or subject to reprisals from the traffickers and their networks.**

78. **With regard to cooperation and referral mechanisms, States should:**

(a) **Establish cooperation mechanisms for referral of victims of trafficking in persons and clearly determine the roles and responsibilities of all stakeholders within the mechanism, including coordination between international organizations and national and local protection services. Ensure assistance is provided unconditionally, and is non-discriminatory, culturally appropriate, gender-responsive and sensitive to disability and age;**

(b) **Reinforce or create mobile multidisciplinary teams for identification and referral of trafficking victims or potential victims, the composition of which can be adapted to the circumstances of the case;**

(c) **Develop or strengthen measures to ensure coordination and referral between different protection systems, including protection against trafficking, child protection and international protection. Ensure that such measures are promptly implemented upon disembarkation and during the registration and reception procedures.**

79. **National and local social authorities and civil society organizations should be involved in procedures to detect trafficking cases and indications of the risk of trafficking, as well as in the organization of assistance, protection and support for**

**victims or potential victims in cases where a high number of people are identified. Such measures must not be made conditional on the initiation of criminal proceedings, the legal qualification of the crime or the cooperation of victims with law enforcement authorities.**

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# Report of the Special Rapporteur on trafficking in persons, especially women and children on her mission to Cuba

## Note by the Secretariat

In her report, submitted pursuant to Human Rights Council resolution 35/5, the Special Rapporteur on trafficking in persons, especially women and children highlights the commitment of Cuba to combating trafficking in persons, as evidenced by, inter alia, its recently established national action plan for preventing and combating trafficking in persons and for the protection of victims, a soon-to-be-established interministerial body for coordination of anti-trafficking actions; victims' access to legal remedies, including compensation, through the indemnity fund for victims of crimes; the country's free and universal education and health-care systems; and social services that reduce vulnerabilities to trafficking.

The Special Rapporteur nonetheless expresses concern about — among other things — the lack of a clear legal definition of trafficking, and the conflation of procuring and trafficking in the penal code, which hampers a correct perception of the features of trafficking among government officials and civil society organizations. Trafficking is still perceived as a crime related to sexual exploitation, while the labour dimension of trafficking is overlooked. Other challenges include identification of victims being carried out on only a limited scale, low levels of prosecution of cases of trafficking, and inadequate legal and institutional protection frameworks for victims. Although prostitution is not a crime per se, individuals who engage in prostitution/sex work are placed in "rehabilitation centres", without freedom of movement, which is in contrast with the rule of law and violates the rights of possible victims of trafficking.

The Special Rapporteur's recommendations to the Government include the ratification of key international legal instruments, and strengthening of national legislation and policies to protect the rights of trafficking victims, including through the revision of existing penal laws.

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# Report of the Special Rapporteur on trafficking in persons, especially women and children on her mission to Cuba*

## Contents


| | | Page |
|---|---|---|
| I. | Introduction | 3 |
| II. | Main findings | 3 |
| | A. Forms and manifestations of trafficking in persons | 3 |
| | B. Legal, policy and institutional frameworks for combating trafficking in persons | 6 |
| | C. Identification of trafficked persons | 9 |
| | D. Protection of trafficked persons | 10 |
| | E. Investigation, prosecution and punishment | 11 |
| | F. Redress for victims of trafficking | 13 |
| | G. Repatriation and reintegration | 13 |
| | H. Prevention | 14 |
| | I. Cooperation and partnership | 16 |
| III. | Conclusions and recommendations | 17 |
| | A. Conclusions | 17 |
| | B. Recommendations | 18 |


* Circulated in the language of submission and Spanish only.

# I. Introduction

1. The Special Rapporteur on trafficking in persons, especially women and children, Maria Grazia Giammarinaro, visited Cuba from 10 to 14 April 2017, at the invitation of the Government. The objectives of the visit, which included meetings in Havana, Matanzas and Artemisa, was to examine the prevalent forms of trafficking in persons and to assess the effectiveness of measures taken by the Government to prevent and combat trafficking and protect the human rights of trafficked persons.

2. Ms. Giammarinaro expresses her sincere gratitude to the Government for the invitation, as well as for the full cooperation extended to her prior to and during her visit — the first such visit by a special procedure mandate holder of the Human Rights Council in the past 10 years.

3. During her visit, the Special Rapporteur met with representatives from the Ministry of Education, the Ministry of the Interior, the Ministry of External Relations, the Ministry of Justice, the Ministry of Tourism, the Ministry of Labour and Social Security and the Ministry of Public Health, as well as with the president, and members, of the National Assembly. She also visited the Julio Antonio Mella urban secondary school, the diagnostic and orientation centre, the House for Women and Families, a centre for the protection of boys, girls and adolescents, the National Centre for Sex Education, the Central Unit for Medical Collaboration, and the Hotel Meliá in Varadero. She also exchanged views with civil society organizations working on the issue of human trafficking and related matters, and with representatives of United Nations agencies and programmes. She is grateful to the resilient survivors who courageously shared their experiences in the hope of preventing future trafficking in persons.

# II. Main findings

## A. Forms and manifestations of trafficking in persons

4. Available data indicate that Cuba is a source country and to some extent a transit country for trafficking in persons. Victims of internal trafficking in Cuba are women, girls and boys who are subjected to trafficking for sexual exploitation by family members or close relatives.

5. As a source country for trafficking, Cuban girls and women are trafficked for labour and sexual exploitation through deceptive promises or advertisements of employment in the entertainment industry, usually via the Internet or mobile phones outside Cuba, that then turn into forced prostitution. Traffickers are usually Cuban family members, partners or acquaintances who work with foreign counterparts in the countries of destination.

6. Cubans attempting to reach the United States of America through Central and South American States such as Colombia, Ecuador, Mexico and Panama are likely to be trafficked while en route by those who abuse their vulnerability and exploit them sexually or for labour (see paras. 16 and 17 below). There are also transnational cases of trafficking for sexual exploitation from Angola, China and Turkey, and to a lesser extent from Belgium, Equatorial Guinea, Guyana, Spain, Suriname and the United Kingdom of Great Britain and Northern Ireland.[1]

7. Cuba also faces challenges as a transit country for trafficked persons. Migrants from as far away as Africa and Asia, in search of alternative routes to the United States, can be found in the country. While they initiated their migration freely, some may find themselves in situations akin to trafficking when they are compelled into labour exploitation or sexual

[1] Ministry of Foreign Affairs, "Informe de Cuba sobre la prevención y enfrentamiento a la trata de personas y la protección a las victimas" (2016), p. 21.

exploitation while en route in order to repay their travel-related debts or when they accept deceitful promises or solutions that result in exploitation.

8. The root causes of trafficking include limited economic opportunities, particularly outside the capital. Clearly, the flourishing tourism that involves many Cubans is a promising trend and an opportunity for economic development, in particular for self-employment (i.e. for *cuentapropistas*).

9. However, in the tourism sector especially, demand for commercial sexual services could emerge as an underlying factor contributing to trafficking in women and children for sexual exploitation. Within this sector, the possibility of trafficking for labour exploitation cannot be ruled out either, especially in regard to the emerging non-State businesses operating in the tourism sector.

10. The economic, commercial and financial embargo imposed by the United States of America against Cuba for over half a century has a negative impact on efforts by Cuba to prevent and address trafficking. The embargo is consistently condemned by Cuba and the international community for violating international law. The General Assembly, through its annual resolutions, calls for the economic, commercial and financial embargo imposed by the United States of America against Cuba to be ended (see Assembly resolution 72/4, as well as A/72/94). The Inter-American Commission on Human Rights rejects the continuation of the economic sanction because of its disproportionate and indiscriminate impact on the general population, and has repeatedly called on the United States Congress to lift it.[2] The Special Rapporteur on trafficking in persons, especially women and children acknowledges that the embargo has not improved human rights in the country; on the contrary, it has a negative impact on social and economic rights of Cubans and should be lifted. The consequences of the embargo — which imposes indiscriminate hardship on the population — exacerbate the vulnerabilities of both Cubans and migrants in transit in the country, and therefore increase the risk of an expansion in the trafficking of persons.

11. Given the scarce available data on trafficking in persons, the Special Rapporteur found it difficult to assess the exact scope and magnitude of trafficking in persons, especially women and children, in the country. Anti-trafficking work is at its initial stages, as are the legal and institutional protection frameworks for victims of trafficking. This reinforces the problem's invisibility; the extent, trends and manifestations are therefore unknown.

### B. Trafficking of girls, boys and women for sexual exploitation

12. Identified cases of internal trafficking reveal that victims of trafficking in Cuba are girls, boys and women who are, for the most part, subjected to trafficking for the purposes of sexual exploitation. According to official sources, children (both boys and girls) as young as 10 are forced by family members or close relatives to have sexual relations with foreigners and Cubans in order to sustain the family financially.[3] Moreover, adult women are forced into prostitution/sex work and commercial sexual exploitation by their partners, who use means such as threats, force, abuse of power, and control of their earnings.[4] In some instances, these women are trafficked by their partners from their home towns to work in Havana. The Special Rapporteur cautions that in view of the burgeoning tourism industry, the probability of trafficking for sexual exploitation, including that involving children, is likely to increase if the issue is not properly addressed by the authorities.

13. Cuba is also a source country for sex trafficking of women and girls. In this regard, the Special Rapporteur received first-hand information about a case involving the trafficking of a Cuban woman out of the country. The case involved a 23-year-old woman

[2] Inter-American Commission on Human Rights, report on Cuba (2016), available at www.oas.org/en/iachr/docs/annual/2016/docs/InformeAnual2016cap.B.Cuba-en.pdf.

[3] Ministry of Foreign Affairs, "Cuba's report on legal and punitive actions against trafficking in persons and other forms related to sexual exploitation or abuse" (2015 and 2013), available at www.minrex.gob.cu/en/cubas-report-legal-and-punitive-actions-against-trafficking-persons-and-other-forms-related-sexual and www.minrex.gob.cu/es/node/30706.

[4] Ibid.

who had taken up an offer of employment from a Cuban woman, to work as a hostess in a club in Angola, only to find herself in a situation of forced prostitution to repay the travel, visa and accommodation expenses covered by the Cuban trafficker and her Angolan counterparts. Her passport had been confiscated and she had been unable to travel until she managed to repay her debt and a hefty commission to the club from her earnings. Similarly, 21 Cuban women had been trafficked for sexual exploitation to Turkey, after having entered into deceitful employment contracts in Cuba.[5]

14. So far, trafficking for purposes of sexual exploitation has mainly occurred within the close family or couple context, but it can also be carried out by organized groups of criminals, especially in destination countries.

### 2. Trafficking for labour exploitation and sexual exploitation

15. The extent of trafficking for labour exploitation, including of children, is not known. Available information indicates that young people are trafficked out of Cuba for labour exploitation through promises of employment as waiters, dancers or manicurists by traffickers who arrange for their travel, migration and employment contracts.[6]

16. The Special Rapporteur has heard first-hand accounts of young, educated Cuban girls trafficked — by Cubans and foreigners — to China and Turkey on the basis of deceptive promises of employment in the entertainment industry. Once in the destination country, they found that their employment conditions were slavery-like, with long hours and no salaries until they repaid the travel, food and accommodation expenses owed to their traffickers. Their passports were taken away to prevent them from fleeing, and some became irregular migrants as a result of non-renewal of their residence or work permits. This, along with language barriers, prevented them from seeking help from local authorities. Besides exploiting them at work, the traffickers eventually forced them into prostitution. Upon their return to Cuba, some victims become traffickers themselves, thus perpetuating the cycle of trafficking.[7]

17. Moreover, Cubans migrate to South and Central American countries, mostly in order to reach the United States where — until it was discontinued in January 2017 — they benefited from a "wet foot, dry foot" policy that granted permanent residence to those who arrived via a port of entry, even without a visa.[8] In this regard, 56,406 Cubans entered the United States in 2016, up by 31 per cent from 2015 and by 78 per cent from 2014,[9] following the lifting of travel restrictions by the Government of Cuba in 2016 and the announcement of the renewal of ties between the two countries. There is information that Cubans attempting to reach the United States through Colombia, Ecuador, Mexico or Panama are likely to be trafficked by those who exploit their vulnerability while en route. For instance, in August 2016, more than 1,000 Cuban migrants were reportedly stranded in Colombia, close to the border with Panama, and were at risk of being trafficked by people who exploit their precarious situation and their need to continue their journey. In July of the same year, 121 Cuban migrants were allegedly deported from Ecuador without proper notification or the opportunity to appeal against the decisions.[10] In such cases, it is not

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[5] Ministry of Foreign Affairs, "Informe de Cuba sobre la prevención y enfrentamiento a la trata de personas y la protección a las víctimas" (2016).

[6] Ministry of Foreign Affairs, "Cuba's report on legal and punitive actions against trafficking in persons and other forms related to sexual exploitation or abuse" (2015), p. 19.

[7] Ibid., p. 20.

[8] White House, Office of the Press Secretary, statement by the President on Cuban immigration policy (January 2017), available at https://obamawhitehouse.archives.gov/ the-press-office/2017/01/12/statement-president-cuban-immigration-policy.

[9] Pew Research Center, "Surge in Cuban immigration to United States continued through 2016" (January 2017), available at www.pewresearch.org/fact-tank/2017/01/13/cuban-immigration-to-u-s-surges-as-relations-warm/.

[10] Inter-American Commission on Human Rights, "IACHR deeply concerned about the situation of migrants in Colombia close to the Panama border" (August 2016), available at www.oas.org/en/iachr/media_center/preleases/2016/112.asp.

uncommon that some may become potential victims of trafficking, both for labour exploitation and sexual exploitation.

18. In addition, there are indications that Cuba is a transit country for trafficked persons. Migrants from as far away as Africa and Asia in search of alternative routes to the United States have been found in the country. Although they initiated their migration freely, some may find themselves in situations akin to trafficking en route to their destination.

### 3. Trafficking for labour exploitation

19. Information about internal trafficking for labour exploitation purposes was not available. With the recent economic changes that allow for self-employment and for the development of small businesses in some sectors, the State-owned tourism sector has also opened up to non-State businesses to meet the increased demand for tourism, particularly through the opening and managing of restaurants (*paladares*), private room rental (*casas particulares*), and self-employment (*trabajadores cuentapropistas*) serving the industry, such as private construction companies and taxi drivers. While these changes constitute a great opportunity for economic development, attention should be paid to preventing labour exploitation that may amount to trafficking, particularly in the tourist industry which is affected globally by both labour exploitation and sexual exploitation.

20. Moreover, Cuba provides skilled labour, especially in the areas of health, education and sport, to other countries. According to the Government, participation in such programmes is voluntary and based on a contract outlining the wages, benefits, and working and living conditions. Those conditions, which also include a contribution of part of their wages to supporting the development of the health-care system in Cuba, can be accepted or rejected by the participants prior to their departure.

21. While acknowledging the value of such programmes, the Special Rapporteur however learned of allegations where "although the workers voluntarily accept to be part of these programmes and to leave Cuba, once they arrive in their country of destination the voluntary nature of this agreement ends in so far as their freedom of movement is restricted, given that their passports or identity documents are withheld; they cannot choose their place of residence or refuse conditions of work, and they are only paid a very small portion of the wage agreed upon by the governments who are parties to the cooperation agreement".[11] The Special Rapporteur encourages the Government to be aware of human rights violations linked to the withholding of wages and to restrictions on freedom of movement, in order to prevent these unintended effects from materializing.

## B. Legal, policy and institutional frameworks for combating trafficking in persons

### 1. Legal framework

#### (a) International legal framework

22. At the international level, Cuba is party to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, and to a number of international human rights instruments, including the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of the Child and its Optional Protocols on the sale of children, child prostitution and child pornography and on the involvement of children in armed conflict. It has also ratified the International Labour Organization (ILO) Abolition of Forced Labour Convention, 1957 (No. 105), the

[11] International Labour Organization Committee of Experts on the Application of Conventions and Recommendations, Direct Request on Forced Labour Convention, 1930 (No. 29) — adopted 2014, published 104th ILC session (2015), available at www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:3187939.

ILO Forced Labour Convention, 1930 (No. 29), and the ILO Worst Forms of Child Labour Convention, 1999 (No. 182).

23. Regrettably, the country is yet to ratify the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Protocol of 2014 to the ILO Forced Labour Convention, 1930 (No. 29), the ILO Domestic Workers Convention, 2011 (No. 189), and the Convention relating to the Status of Refugees, of 1951, and the 1967 Protocol thereto. Nevertheless, Cuba has a de facto policy of non-refoulement for refugees recognized by the Office of the United Nations High Commissioner for Refugees (UNHCR).

### (b) Domestic legal framework

24. Procuring and pimping, and trafficking in persons, are prohibited under article 302 of the Criminal Code. A person who induces, promotes or enables the prostitution or sexual trade of others, or who manages a sexual establishment, or who gains benefits from the prostitution of others is sentenced to between 4 and 10 years of imprisonment.

25. The sentence may be prolonged to up to 20 years of imprisonment if the trafficker works in health, law and order, education, tourism, youth guidance or the combating of prostitution, or if threats, blackmail, coercion or abuse of authority have been used, or if the victim is a disabled person in the care of the perpetrator (art. 302.2).

26. The sentence may be extended to up to 30 years in cases where the trafficking includes organization or incitation for the purposes of prostitution or other forms of sex trade, where the perpetrator is a repeat offender, or where cross-border movement is involved (art. 302.3).

27. Other punishable offences that may amount to trafficking and other forms of exploitation include: sale of children, illegal adoption and trafficking of a child under the age of 16 in exchange for recompense or payment, punished by 2 to 15 years of imprisonment if the purpose is corruption, pornography, prostitution, sale of human organs, forced labour or illegal activities (art. 316); corruption of minors under the age of 16 for forced prostitution, punishable by imprisonment of up to 15 years, or 30 years in the case of use of violence for instance (art. 310); rape, with the punishment ranging from four years' imprisonment to the death sentence (art. 298.1); paedophilia with violence, punishable by 7 to 30 years' imprisonment (art. 299.1), lascivious abuse, punishable by six months' to five years' imprisonment (art. 300.1); sexual assault, punishable by three months' imprisonment and/or a fine (art. 303.1); rape of a child aged 12 to 16 years, punishable by three months' to one year's imprisonment (art. 305.1); and any other act that is against the normal development of minors, punishable by three months' to one year's imprisonment and/or a fine (art. 315).

28. Moreover, confiscation of properties and assets (arts. 302.4 and 302.5), and suspension or temporary loss of parental rights, are also provided for as ancillary punishments, as is the prohibition on exercising professions, positions or trades when the act of the perpetrator was committed while he was carrying out such profession, position or trade.

29. The labour framework in Cuba consists of the Constitution, the Labour Code (Law No. 116/2013), the Labour Code Regulations (Decree No. 326/2014), and several ministerial resolutions that set out minimum labour protection standards, including working hours, paid leave and regular payment of wages. Guarantees for female workers, exceptional arrangements for the labour of children aged between 15 and 18 years, and guaranteeing the protection of workers, including via a social security system, are also provided for.

30. With regard to migration, Decree 217/1997 regulates internal migration, with strict requirements for permanently relocating to the city of Havana from other parts of the country. This was subsequently amended by Decree 293/2011, which exempted certain persons, such as close family members of those already in the capital, from being obliged to go through the authorization procedures. Moreover, on the basis of the Law on Foreigners

(Law 131/1979) and Decree 27/1978, the Cuban authorities can transfer or expel foreigners it deems undesirable from its territory, who have engaged in criminal activities which involve children or have exploited people or trafficked them.[12]

31. The legal framework for the donation of organs and tissues of living donors is regulated by Resolution 857/2015 of the Ministry of Public Health.

32. In spite of these laws, the Special Rapporteur is concerned at the absence of an adequate legal framework to prevent and combat trafficking in persons that is in conformity with the Trafficking in Persons Protocol — especially the definitions in its article 3. Consequently, trafficking in persons, especially women and children, is not comprehensively addressed in the legal framework. More specifically, the crimes of procuring and trafficking are conflated in the penal code and trafficking in all its forms is neither defined nor recognized. In addition, protection of children against sexually motivated crimes is only provided until the age of 16. Moreover, by focusing exclusively on trafficking for sexual exploitation, the existing legislation excludes other forms of exploitation, such as trafficking for the purpose of labour exploitation.

### 2. Policy framework

33. A national action plan for preventing and combating trafficking in persons and for the protection of victims (for 2017–2020) (hereinafter referred to as the National Action Plan) was adopted by the Council of State in February 2017. It sets out a "zero tolerance" policy foundation for the country's anti-trafficking work. It focuses on prevention of trafficking, protection of victims and prosecution of traffickers, through its human rights approach, gender focus, primacy of the best interest of the child, and involvement of victims, and the cooperation and participation of different stakeholders.

34. Under the National Action Plan, the country seeks the revision of its legal framework on trafficking; the reinforcement of its identification mechanism; the establishment of protection mechanisms for victims, in cooperation with relevant national stakeholders; and the prosecution of perpetrators. It plans to build the capacity of stakeholders, to raise the awareness of the population at large, and to promote international cooperation with regard to preventing and combating trafficking in persons.

35. The Special Rapporteur notes the political will of the Government to combat trafficking and the involvement of relevant government offices and some civil society organizations in the implementation of the National Action Plan. The Government's efforts in adopting a participatory approach when developing the National Action Plan, which included the establishment of a multisectoral, interinstitutional and multidisciplinary group with representatives of numerous organizations and institutions, coordinated by the Ministry of Foreign Affairs, is also encouraging.

### 3. Institutional framework

36. At the time of the Special Rapporteur's visit to Cuba, an interministerial body to combat trafficking was not yet established, which rendered the country's anti-trafficking action incoherent and uncoordinated within and across the authorities concerned, service providers, and some civil society organizations. The establishment of such a body is, however, addressed in the National Action Plan for 2017–2020 to better coordinate the anti-trafficking work in coordination with State institutions, including the Ministries of Justice, Public Health, Education, Foreign Affairs, Labour and Social Security, Culture, and Tourism, as well as with civil society organizations and communities.[13] Under this framework, the Ministry of Justice will coordinate actions involving an international component, while bilateral dialogues and cooperation processes and the work of United Nations human rights bodies will continue to be coordinated by the Ministry of Foreign Affairs.[14]

[12] María Caridad Bertot Yero, "La trata de personas en la legislación penal cubana".

[13] National Action Plan, pp. 6–8.

[14] Ibid., p. 7.

37. In the meantime, the country's anti-trafficking efforts are undertaken by various bodies, including the Ministry of Justice, which, among other things, is responsible for criminal prosecution in trafficking cases, the registration of births, and the issuance of birth certificates in collaboration with the Ministry of Public Health.[15] The Ministry of Public Health, through its national organization for transplants, oversees and monitors organ transplants in order to prevent trafficking for the purposes of removal of organs.[16] It also ensures that free health care is available to all, including trafficked persons.[17]

38. Additionally, the Ministry of the Interior, through its General Division for Criminal Investigations and Operations and its General Division of the National Revolutionary Police, investigates trafficking cases and crimes associated with transnational crimes in Cuba. Moreover, the Attorney General's Office, through its family protection and jurisdictional issues directorate, provides specialized attention for children and adolescents, especially those who are victims of crimes and violence.[18]

39. The Ministry of Labour and Social Security provides guidance on, and monitors and coordinates, actions related to preventing trafficking in persons and to social assistance for trafficked persons. It also provides training programmes for its personnel. Administrative councils of the provincial and municipal People's Power, and the provincial and municipal labour bureaux, are also involved in this prevention, assistance and social work. At the municipal level, the social work unit organizes and monitors the work of the social workers — whose work covers the entire population.[19]

40. Within the Ministry of Tourism, the Office of Security and Protection specifically focuses on preventing Cuba being depicted as a sex tourism destination.[20] The Ministry of Education addresses child trafficking through, inter alia, its prevention and protection actions and also contributes to combating illegal adoption.

41. While these institutions play positive roles in combating trafficking in persons in Cuba, the absence of a specific multisectoral structure with adequate human and financial resources, as well as defined responsibilities to address the phenomenon in a coordinated manner, has been a challenge, which the Special Rapporteur hopes will be remedied with the establishment of the structure envisaged in the National Action Plan.

## C. Identification of trafficked persons

42. Victims of trafficking are primarily identified by the police, social workers and health officials. According to information received, identified cases are limited to trafficking for sexual exploitation of women, child prostitution and sexual abuse of minors.[21]

43. Labour inspectors of the National Labour Inspection Bureau, within the Ministry of Labour and Social Security, monitor State and non-State labour entities' compliance with labour legislation and requirements for safety and protection at work.[22] Inspectors, including those trained to detect cases of labour trafficking, can order the cessation of the causes or effects of violations, close down and/or stop equipment, and shut down premises considered to be dangerous for the safety and health of workers or that of the population and impose fines on Cuban and foreign juridical and natural persons in the non-State sector.

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[15] Ministry of Foreign Affairs, "Cuba's report on legal and punitive actions against trafficking in persons and other forms related to sexual exploitation or abuse" (2015).

[16] Ministry of Public Health resolutions 46/2015, 857/2015 and 223/2014.

[17] See CEDAW/C/CUB/5-6, para. 472.

[18] Attorney General's resolution 33/2016.

[19] Ministry of Foreign Affairs, "Cuba's report on legal and punitive actions against trafficking in persons and other forms related to sexual exploitation or abuse" (2015).

[20] Meeting with the Minister of Tourism, Manuel Marrero Cruz, April 2017.

[21] Ministry of Foreign Affairs, "Cuba's report on legal and punitive actions against trafficking in persons and other forms related to sexual exploitation or abuse" (2015 and 2013).

[22] National Action Plan, p. 5; and Ministry of Foreign Affairs, "Cuba's report on legal and punitive actions against trafficking in persons and other forms related to sexual exploitation or abuse" (2015).

In spite of this, labour inspections conducted in 2,005 entities in the country, in 2016 and the first quarter of 2017, resulted in the detection of 9,364 labour violations, including 14 cases involving children under 18; however no case of trafficking for the purpose of labour exploitation, including forced labour of children, was detected.[23] In addition, in 2016, the *Oficina de Atención a la Población* received 67 labour-related complaints and 56 requests, though none related to trafficking in persons for the purpose of labour exploitation.[24]

44. Public complaints on a number of issues, including trafficking in persons, can be received via the telephone line run by the Prosecutor General's Office and the Federation of Cuban Women. In 2016, out of the 17,925 complaints received, all pertained to violations of children's rights by family members, and no complaints related to trafficking were detected.[25] The Special Rapporteur notes the importance of this tool — which is operational 24 hours a day in Spanish — to identify victims of trafficking, though actual cases of trafficking had not been reported or identified through the tool.

45. The Federation of Cuban Women, a national organization with consultative status with the Economic and Social Council, that among other things works in the areas of gender, education and health, also identifies potential victims of trafficking through its programmes and the actions undertaken by its 50,000 regularly trained voluntary social workers, who provide services to the community and at 173 centres that give guidance to women and families (*casas de orientación a la mujer y la familia*), together with 15 specialists in social work and 114 professional technicians covering the entire country.[26]

46. Moreover, under the country's extensive social system, health professionals, social workers, educators and those working in the tourism sector are also well placed to identify trafficking and risks of trafficking within the country, if they receive more capacity-building and guidance.

47. The Special Rapporteur observes that the very low incidence of identified victims may not be indicative of the true extent of the problem of trafficking in the country. Identification of trafficked persons is hindered by the absence of a clear legal definition of trafficking that encompasses all forms of trafficking, as per article 3 of the Trafficking in Persons Protocol, as noted above.

48. Other challenges contributing to the low identification rate include the absence of standard tools and protocols for the detection of trafficked persons that can be used by all. Moreover, the capacity gap on the part of front-line officers, including police and border officials, public prosecutors and judges, to quickly and accurately identify cases of trafficking and potential trafficking is another challenge, despite the Government's ongoing efforts to further address this via training programmes. As a result, victims of trafficking, including in the migrant population transiting through Cuba, remain unidentified or are misidentified as victims of other crimes.

## D. Protection of trafficked persons

49. Once identified, trafficked persons should be provided with appropriate care and assistance to enable them to recover and to obtain protection from further exploitation and harm. Such support should not be made conditional on cooperation with criminal justice authorities.[27]

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[23] Ministry of Foreign Affairs, "Informe de Cuba sobre la prevención y enfrentamiento a la trata de personas y la protección a las víctimas" (2015), p. 15.

[24] Ibid.

[25] Ibid., p. 9.

[26] Ministry of Foreign Affairs, "Cuba's report on legal and punitive actions against trafficking in persons and other forms related to sexual exploitation or abuse" (2015).

[27] Office of the United Nations High Commissioner for Human Rights (OHCHR), "Human rights and human trafficking", p. 14.

### 1. Non-criminalization of trafficked persons

50. The trafficking cycle cannot be broken without respect for the rights of trafficked persons and in a non-discriminatory manner. In this regard, the Cuban legal framework does not provide victims of trafficking with specific protection from further harm, or provide them with assistance in achieving full recovery. Nor does it confer upon victims of trafficking a special status that would exempt them from prosecution for offences committed in relation to their status as trafficked persons. Nevertheless, in practice, identified victims of trafficking have benefited from exemption from criminal prosecution and have been allowed to return to Cuba even when immigration laws have been infringed.

51. Individuals who engage in prostitution/sex work, including children between the ages of 16 and 18 years, are detained in "rehabilitation centres" where they are subject to restriction of movement. They can be sentenced by courts to up to four years' confinement in such centres, where they are required to work, mostly in the agricultural or horticultural sector.[28] It is not ruled out that there may be possible victims of trafficking among these women and children.

52. The Special Rapporteur is highly concerned that although prostitution is not a crime in and of itself in Cuba, people engaging in prostitution/sex work are actually punished in the same manner as those who commit crimes against the norms of morality, such as antisocial behaviour and causing disturbance to the community which can lead to the imposition of pre-criminal measures including re-education for periods of up to four years.[29] Such measures are based on subjective perceptions and are inconsistent with the rule of law. They also constitute an impediment to the identification of — and to assistance and protection for — possible victims of trafficking for sexual exploitation from among those engaged in prostitution/sex work, who are stigmatized and unduly detained even when no crime has been perpetrated. Therefore, the detention of people engaging in prostitution in "rehabilitation centres" should be abolished without delay.

### 2. Shelters

53. Cuba guarantees universal and free health care, education and social assistance for all its population, including for victims and potential victims of trafficking.

54. The Federation of Cuban Women, through its 15 guidance centres for women and families (*casas de orientación a la mujer y la familia*), assists victims of violence, including those of sexual violence. Among other things, these centres provide services such as health care, mental health and substance abuse treatment, skills training, and assistance in finding employment. A social worker guides and accompanies the victims throughout their recovery process. In 2016, 600,000 persons, of whom 25 per cent were men, were assisted by the centres. Of these, 600 were victims of violence.[30] However, no victim of trafficking has yet benefited from these shelters.

55. Moreover, the Special Rapporteur is concerned that trafficked persons, particularly boys, girls and victims of labour exploitation, may be falling through the protection gap, in the absence of shelters specifically designed to accommodate and provide protection to them. In the long term, the existing shelters may be inadequate to accommodate trafficked persons, whose circumstances and needs are different from those of other victims of violence.

## E. Investigation, prosecution and punishment

56. Investigations for offences of trafficking in persons, procuring, pornography and other forms of sexual abuse of adults, minors and foreigners is undertaken by the technical investigation police (*Policía Técnica de Investigaciones*) of the General Division of the

[28] See E/CN.4/2000/68/Add.2, para. 52.

[29] Law No. 62, arts. 72–74.

[30] Meeting with the Secretary-General of the Federation of Cuban Women, Teresa Amarelle Boué, April 2017.

National Revolutionary Police. The General Bureau for Criminal Investigation and Operations, through its specialized bodies, also investigates these cases and prosecutes perpetrators. Moreover, a special tourism team investigates suspicious transactions and antisocial behaviour involving tourists and residents on the beach, and the INTERPOL National Central Bureau assists local police forces in investigations that require international outreach.

57. Cases of minors who are victims of crime, including victims of trafficking, are investigated by the Minors Division of the Ministry of the Interior, through its three centres for the protection of girls, boys and adolescents located in Havana, Santiago de Cuba and Santa Clara. In these centres, qualified multidisciplinary teams prevent the revictimization of children under 16 years of age who have been victims of sexual offences, by ensuring their participation and appropriate treatment in legal proceedings and by taking into consideration their best interests, in a manner consistent with their evolving capacities. Audio and video recordings that are admissible in court are also used. The physical and/or psychological damage, the possible repercussions on the victim, and the treatment or follow-up actions from the medical, psychological, psychiatric, educational, family or social points of view are also determined. The Special Rapporteur notes with appreciation this interinstitutional coordination between law enforcement, public health and education agencies.

58. During 2015, the centres for the protection of girls, boys and adolescents and alternative centres in the provinces provided protection for 2,174 boys and girls presumed to be victims of sexual abuse.[31] In 2016, they provided protection for 888,000 children.[32] Of these, only 18 cases related to corruption of minors for the purposes of exploitation, particularly sexual exploitation.[33]

59. With regard to the prosecution of cases of trafficking in persons, especially women and children, 21 cases of trafficking were tried in 2016; one involved trafficking for forced begging, while 20 involved trafficking for sexual exploitation. Of these, four cases involved pimping and procuring and trafficking, and 17 cases related to corruption of minors.[34] The age of the youngest victim was 7 years, and the convictions ranged from 5 to 25 years' imprisonment. In 2015, 52 cases were tried for the crimes of procuring and trafficking in persons and 90 cases were tried for the crime of corruption of minors.[35] Of those, 17 convictions, with sentences ranging from 5 to 15 years' imprisonment, were handed down in 10 cases which had some elements of trafficking for sexual exploitation, including of minors.[36] Those cases included enforced prostitution of Cuban women and girls as young as 10 to foreign and Cuban men, by family members or partners. In 2013, out of 144 cases that were prosecuted for corruption of minors and procurement, 13 cases had some elements of trafficking for sexual exploitation, including of minors, and 14 convictions with sentences ranging from 4 to 14 years' imprisonment were handed down to perpetrators — predominantly Cuban men.[37]

60. The Special Rapporteur acknowledges the safeguards in the legal framework to protect child victims of crimes, including by ensuring their privacy, especially in trials involving cases of child abuse and other crimes characteristic of trafficking, as per instruction 173/2003 of the Governing Council of the People's Supreme Court. She also

[31] Ministry of Foreign Affairs, "Cuba's report on legal and punitive actions against trafficking in persons and other forms related to sexual exploitation or abuse" (2015).

[32] Ministry of Foreign Affairs, "Informe de Cuba sobre la prevención y enfrentamiento a la trata de personas y la protección a las victimas" (2017), p. 21, available at http://www.minrex.gob.cu/sites/default/files/ficheros/informe_de_cuba_sobre_prevencion_y_enfrentamiento_trata_de_personas_y_proteccion_a_victimas_2017.pdf.

[33] Ibid.

[34] Ibid., pp. 25–30.

[35] Ministry of Foreign Affairs, "Cuba's report on legal and punitive actions against trafficking in persons and other forms related to sexual exploitation or abuse" (2015).

[36] Ibid., pp. 16–18.

[37] Ministry of Foreign Affairs, "Cuba's report on legal and punitive actions against trafficking in persons and other forms related to sexual exploitation or abuse" (2013).

notes the role of the centres for the protection of girls, boys and adolescents in accompanying children to trial in the exceptional cases where they are subpoenaed to court. The collaboration and cooperation between law enforcement and health practitioners for the well-being of children is also commendable. Moreover, it is worth noting the composition of Cuban courts — where more than 70 per cent of judges and prosecutors are women,[38] and which have lay judges who are from worker collectives, or whose background is from community organizations or civil society organizations, who serve on a par with professional judges, for a period of five years[39] — a further safeguard for the protection of children. While this may work for Cuba, given the high level of education, further training about trafficking for lay judges is still needed in order for them to be able to handle the crime of trafficking.

61. In spite of such positive developments, it is worrying that cases of labour trafficking are yet to be identified, investigated and prosecuted — indicating that in Cuba, the fight against trafficking in persons is mostly focused on sexual exploitation. Moreover, the Special Rapporteur cautions that the legal understanding of trafficking seems to be based on the perception of cases where extreme acts and means of coercion are used. This disregards forms of trafficking that are subtler yet still abusive. Overall, the limited capacity of law enforcement agencies and judicial authorities to identify all forms of trafficking, especially those involving women and children, on the basis of existing national anti-trafficking laws, hampers the investigation and prosecution of all forms of trafficking in persons.

## F. Redress for victims of trafficking

62. According to international law and standards, States are obliged to provide victims of trafficking with access to effective remedies.[40] These include restitution, recovery and rehabilitation, satisfaction and guarantee of non-repetition, as well as access to information and legal assistance, and regularization of residency status.[41]

63. In Cuba, the remedies for victims of trafficking provided by law include confiscation of the trafficker's assets, the suspension of paternal rights in cases where the victim is a descendant of the trafficker, and a prohibition on working in their usual profession for those who are found to have engaged in trafficking.[42]

64. An indemnity fund, containing the earnings of prisoners, money from fines and other contributions from the Government, awards compensation to victims of crimes following criminal proceedings. The compensation is available to all victims, including victims of trafficking, regardless of the solvency of the prosecuted offender.[43] It is not clear, however, whether the fund has been used to support victims of trafficking.

65. In certain circumstances, permanent or temporary residence in itself may be a necessary and appropriate form of remedy. Where trafficking risks exist, the Special Rapporteur is of the view that identified trafficked persons from among the migrant population should be provided with the opportunity to remain in Cuba on a temporary or permanent basis and provided with appropriate support to be integrated effectively into Cuban society.

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[38] See www.granma.cu/cuba/2017-07-20/empoderar-a-mujeres-y-ninas-reduce-sus-vulnerabilidades-20-07-2017-23-07-11.

[39] The Constitution, in its article 124, provides — in regard to the administration of justice — that all courts operate in a collegiate manner and both professional and lay judges participate in them with equal rights and obligations.

[40] Trafficking in Persons Protocol, art. 6, para. 6; and OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking, guideline 9.

[41] See A/HRC/17/35.

[42] National Action Plan, p. 4.

[43] Bruce R. Jacob, "Reparation or restitution by the criminal offender to his victim: applicability of an ancient concept in the modern correctional process" (1965), *Journal of Criminal Law and Criminology*, p. 155, available at http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=5650&context=jclc.

## G. Repatriation and reintegration

66. Repatriation of victims of trafficking in persons is provided for in the Trafficking in Persons Protocol.[44] At the time of the Special Rapporteur's visit, Cuba did not have a standard repatriation and reintegration procedure specifically designed for identified victims of trafficking. The voluntary repatriation of stranded migrants in Cuba is facilitated by the Government in cooperation with the International Organization for Migration,[45] while recognized refugees are resettled by UNHCR. The Special Rapporteur cautions that if inadequately screened, potential victims of trafficking from among migrants and recognized refugees set to be repatriated could be put at serious risk of being retrafficked or of severe violations of their human rights in their country of origin.

67. Upon their voluntary return from abroad, Cuban survivors of trafficking whom the Special Rapporteur met indicated that they had benefited from free health care and educational and training opportunities to enable them to reintegrate into society and continue their lives.

68. While the National Action Plan does not specifically provide for voluntary, safe and dignified return and reintegration options for all victims of trafficking, the Special Rapporteur hopes that, based on existing practice, procedural safeguards will be established to provide for a recovery and reflection period, alternatives to repatriation to their countries of origin, and the carrying out of risk assessments to ensure that their repatriation will not jeopardize their safety and security.

## H. Prevention

69. The Special Rapporteur welcomes the Government's strong focus on prevention of trafficking through a multidimensional approach.

70. The universal education system of Cuba contributes to the prevention of trafficking of students from preschool to tertiary education levels through sexual and civic education programmes, as well as different after school programmes such as the ones she was briefed on by students and teachers during her visit to the Julio Antonio Mella secondary school in Havana. The Special Rapporteur learned that teachers endeavoured to pay attention to the situation of all children, including those in vulnerable situations such as orphans, children whose parents are incarcerated, and children with mental health problems and their families. They received regular training on a number of topics, including prevention of violence which also addresses trafficking in persons.[46] In April 2017 for instance, the topic of trafficking in persons was addressed at a national workshop to prepare for the 2017/18 school year.[47] The Special Rapporteur was also informed that guidance material was being developed to address the specific crime of trafficking and how to combat it, in cooperation with teachers, students and the family.

71. The Ministry of Public Health holds periodic meetings on gender-based violence, prostitution, sex tourism and trafficking in persons to enable health professionals to identify challenges and steps forward.[48] Likewise, training is provided on delivering a health-based response to situations of sexual violence that may be linked to trafficking in persons. In 2015, a protocol on addressing the situation of victims of sexual abuse which includes preventative actions to minimize the phenomenon and deal with the victims individually was designed. Thus, health-care professionals have an important role in preventing and

[44] Trafficking in Persons Protocol, art. 8.

[45] International Organization for Migration, overview on Cuba, available at https://www.iom.int/countries/cuba.

[46] Ministry of Education, "Labor de Ministerio de Educación para la prevención de la trata de personas", (2017), p. 3.

[47] Ministry of Foreign Affairs, "Informe de Cuba sobre la prevención y enfrentamiento a la trata de personas y la protección a las víctimas" (2017), p. 12.

[48] Ministry of Foreign Affairs, "Cuba's report on legal and punitive actions against trafficking in persons and other forms related to sexual exploitation or abuse" (2015).

identifying trafficking, given that access to physical and mental health services is freely available to all Cubans, including victims and potential victims of trafficking. Similarly, health workers undertaking missions outside Cuba, who receive training on various topics, including trafficking in persons, also have the opportunity to engage in prevention of trafficking through awareness-raising campaigns and identification of potential victims.[49]

72. The Ministry of the Interior also gives training on prevention, protection and follow-up, concerning child victims of sexual abuse. Between 2013 and 2015, it provided training sessions on prevention and detection of sexual exploitation of children to officials of the Prosecutor General's Office, courts, and the public health system (physicians, psychiatrists and paediatricians) and to members of the Federation of Cuban Women.[50] Moreover, two nationally broadcast video lectures on the protection of victims and measures against the perpetrators, convened in 2015 by the Prosecutor General's Office and the Minors Division, were attended by some 600 officials including public prosecutors, and specialized investigators from the directorate general for criminal investigation and operations (Dirección General de Investigación Criminal y Operaciones) and the General Division of the National Revolutionary Police. The General Division, together with the National Centre for Sex Education, also held four regional training sessions for police officers on gender-based violence and exploitation, and lesbian, gay, bisexual, transgender and intersex rights and protection. They also provided a postgraduate course on prevention of child sexual abuse. Moreover, officers of the Ministry of the Interior attend various international and regional events related to prevention and to the protection of children from crimes and abuses.[51]

73. Within the Ministry of Tourism, the Office of Security and Protection promotes safe tourism by monitoring Cuba's image as a tourist destination, by combating sex tourism and by addressing the demand for commercial sex. In 2016 it detected seven such cases, following checks on 78 tourist facilities.[52] It also trained law enforcement officials, assigned to the tourism sector, on trafficking indicators.[53] In 2015, as part of actions for the prevention of trafficking, especially trafficking of a sexual nature, the Federation of Cuban Women held educational meetings to address procurement of sexual services, for 729 families authorized to rent rooms to tourists and for workers at 134 nightclubs throughout Cuba.[54]

74. The Ministry of Labour and Social Security also provides its social workers with training to prevent and address a range of social problems. However, data on training for labour inspectors to screen for indicators of potential trafficking for labour exploitation was not available.

75. Public awareness of trafficking in persons is a key prevention strategy appropriately targeting trafficked persons, those at risk of being trafficked or otherwise exploited, and their employers or workplaces. In this regard, the State media has contributed to raising awareness, mainly focusing on trafficking for sexual exploitation. Similarly, the José Martí International Institute of Journalism held a seminar/workshop on the treatment of gender-based violence, particularly on trafficking in persons and how it is covered in the media. Finally, the publication of the Government's periodic reports is a tool to keep the public updated on the efforts undertaken by the Government to prevent trafficking, protect trafficked persons and prosecute perpetrators on the basis of legal, institutional and policy frameworks and partnerships.

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[49] Ministry of Foreign Affairs, "Informe de Cuba sobre la prevención y enfrentamiento a la trata de personas y la protección a las víctimas" (2017), p. 15.

[50] Ministry of Foreign Affairs, "Cuba's report on legal and punitive actions against trafficking in persons and other forms related to sexual exploitation or abuse" (2015 and 2013).

[51] Ministry of Foreign Affairs, "Cuba's report on legal and punitive actions against trafficking in persons and other forms related to sexual exploitation or abuse" (2015), p. 14.

[52] Ministry of Foreign Affairs, "Informe de Cuba sobre la prevención y enfrentamiento a la trata de personas y la protección a las víctimas" (2017), p. 17.

[53] Meeting with the Minister of Tourism, Manuel Marrero Cruz, April 2017.

[54] Ministry of Foreign Affairs, "Cuba's report on legal and punitive actions against trafficking in persons and other forms related to sexual exploitation or abuse" (2015).

76. The Special Rapporteur acknowledges the Government's numerous awareness-raising efforts and training programmes to increase the knowledge and skills to detect risks of trafficking in persons and to prevent it. However, the overall limited understanding of the phenomenon of trafficking, which is wrongly perceived as a crime committed by criminals operating exclusively in the context of sexual exploitation of women and children, is further impacted by the absence of baseline research on manifestations of trafficking in all its forms, as well as gaps in the legal and policy framework. The potential of government institutions to raise awareness about trafficking in persons and proactively take measures to discourage it does not seem to be fully exploited, as the institutions themselves remain in need of further capacity-building. In addition, front-line officials, civil society organizations and the general population remain largely unaware of government actions to combat and prevent all forms of trafficking in persons.

## I. Cooperation and partnership

### 1. Cooperation with civil society

77. The Special Rapporteur acknowledges the role played by some civil society organizations during the discussion and validation process of the National Action Plan. In terms of cooperation between the Government and civil society organizations, the National Action Plan envisages increased capacity and participation of civil society organizations in the areas of prevention of trafficking and protection and reintegration of trafficked persons.

78. However, in her meeting with civil society organizations in Havana, the Special Rapporteur noted that the will of some such organizations to combat trafficking is hampered by their varying degree of understanding of the crime of trafficking and a lack of adequate resources.

### 2. International, regional and bilateral cooperation

79. The transnational and multidimensional nature of trafficking requires the participation of source, transit and destination countries in anti-trafficking work, whether in the area of identification of victims, exchange of information, joint investigations or judicial cooperation.

80. Cuba collaborates with Canada, Ecuador, France, Italy, Spain and the United States of America, among others, in the area of criminal investigations, judicial assistance and exchanges of information.[55] Furthermore, it cooperates and exchanges information with INTERPOL on foreign citizens suspected of sex crimes against children, including child sex trafficking. Cuba is also part of the Ibero-American Network of International Judicial Cooperation.

81. Through nine bilateral cooperation agreements and memorandums of understanding, with Angola, Belarus, the Plurinational State of Bolivia, Brazil, China, Ecuador, Mozambique, the Russian Federation and Viet Nam, the Prosecutor General's Office of Cuba strengthens the capacity of its members through training.[56]

82. Cuba also has agreements with the Bahamas, the Dominican Republic, Ecuador, Guatemala, Jamaica, Mexico, Panama and the United States, as well as with the Cayman Islands, on migration, and another is under way with Honduras to ensure reception, medical treatment and reintegration of migrants intercepted at sea or in irregular transit, and identification of victims and potential victims of trafficking among other groups requiring protection.

83. The Special Rapporteur learned that Cuba intended to continue promoting international, regional and national cooperation and exchanging experiences and practices, mainly through South-South cooperation, and to implement a comprehensive, coordinated

[55] Ibid.
[56] Ibid.

and systematic response to prevent and combat trafficking as reflected in the National Action Plan.[57]

84. Cuba has benefited from some assistance from the International Organization for Migration and the United Nations Office on Drugs and Crime in developing the National Action Plan, reviewing existing laws, and facilitating workshops and sensitization activities on trafficking in persons.

# III. Conclusions and recommendations

## A. Conclusions

**85. Available data indicate that Cuba is a source country and to some extent a transit country for trafficking in persons. Victims of internal trafficking in Cuba are women, girls and boys who are subjected to trafficking for sexual exploitation by family members or close relatives. Regarding trafficking of Cubans citizens to countries abroad, girls and women are trafficked for labour and sexual exploitation through deceptive promises of employment in the entertainment industry abroad, that subsequently turn into forced prostitution. Cuba also faces challenges as a transit country, for possible trafficking in persons from among African and Asian migrants en route to the United States of Amserica.**

**86. The Special Rapporteur commends the political will of Cuba to address trafficking in persons, as reflected in the ratification of international instruments to combat trafficking in persons and in its focus on raising awareness as a means of preventing trafficking. The country's free and universal education and health-care systems, and the attention paid by social services, reduce vulnerabilities to trafficking.**

**87. However, the efforts to prevent and combat trafficking in persons are at an initial stage. The recently established National Action Plan for preventing and combating trafficking in persons and for the protection of victims (for 2017–2020) is a good start, as is the soon-to-be-established interministerial body for coordination of matters pertaining to trafficking. Moreover, victims of trafficking can, in principle, receive remedies, including compensation via the indemnity fund for victims of crimes.**

**88. Notwithstanding these positive steps, trafficking in persons, especially women and children, is unfortunately not comprehensively addressed in the legal framework. The crimes of procuring and trafficking are conflated in the penal code; trafficking in all its forms is neither defined nor recognized as envisaged in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime; and protection of children against sexually motivated crimes is only provided until the age of 16.**

**89. The lack of a clear legal definition of trafficking in national legislation hampers a correct perception of the real features of trafficking, among government officials and civil society organizations. As a consequence, there is no awareness about the distinction between trafficking and procuring, and the specificities of trafficking as opposed to sexual violence and abuse. Moreover, trafficking is still perceived as being related to sexual exploitation, while the labour dimension is overlooked.**

**90. As a result, identified cases of trafficking are limited to trafficking for sexual exploitation, mainly relating to child prostitution, sexual abuse of minors, and forced prostitution of women by family members or partners. In some cases, these may amount to trafficking but are not recognized as such. In addition, with the recent and positive changes which allow for self-employment and development of small business in some sectors, labour exploitation amounting to trafficking may arise, particularly**

[57] National Action Plan, p. 7 and p. 9.

in the tourist industry which is affected globally by both labour exploitation and sexual exploitation. There is thus a need for an active search to identify such potential new and emerging forms of exploitation.

91. Moreover, the capacity gap on the part of front-line officers in terms of ability to quickly and accurately identify cases of trafficking and cases involving potential trafficking, and the absence of standard identification tools and protocols, is a challenge, despite the Government's ongoing efforts to address it. As a consequence — and also in view of the limits of the existing anti-trafficking law — the capacity of law enforcement agencies, judicial authorities and labour inspectors, as well as the prosecution rate and punishment rate for all forms and manifestations of trafficking in persons, remain very low.

92. The Special Rapporteur is also highly concerned that although prostitution is not a crime per se, individuals who engage in prostitution/sex work, including children between the ages of 16 and 18 years, and including possible trafficking victims, are often detained in "rehabilitation centres", which constitutes a violation of their rights.

93. Other challenges relate to coordination between the authorities concerned and service providers, as a result of the lack of an interinstitutional mechanism to combat trafficking; and to the lack of a comprehensive package of services available to all victims of trafficking. Moreover, the dearth of available data on trafficking in persons inhibits understanding of the exact scope and magnitude of trafficking in persons, especially of women and children, in the country. The inadequate legal and institutional protection framework for victims of trafficking reinforces the invisibility of the problem, and thus the extent, trends and manifestations thereof are unknown.

## F. Recommendations

94. On the basis of the above findings, and in a spirit of cooperation and dialogue, the Special Rapporteur offers the following recommendations that could also contribute to the effective implementation of the National Action Plan for preventing and combating trafficking in persons and for the protection of victims, for 2017–2020:

95. With regard to the international, regional and bilateral frameworks:

(a) Ratify without delay the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention relating to the Status of Refugees, of 1951, and its 1967 Protocol, and the Protocol of 2014 to the International Labour Organization Forced Labour Convention, 1930 (No. 29);

(b) Establish and, where already in existence, implement bilateral and multilateral agreements for the exchange of information, mutual legal assistance and safe returns, in order to jointly tackle the root causes of trafficking in persons;

(c) Continue working with source countries to ensure prevention and awareness-raising.

96. With regard to the national framework:

(a) Revise and implement the anti-trafficking legal framework to include the three elements of trafficking — the act, the means and the purposes, as per article 3 of the Trafficking in Persons Protocol. This is needed to accurately identify, protect and assist victims of trafficking in persons, especially women and children, to investigate and prosecute traffickers and to better prevent trafficking in Cuba;

(b) Implement the National Action Plan (2017–2020) and measure the progress and the impact on anti-trafficking initiatives;

(c) Accelerate the establishment of the interinstitutional national anti-trafficking body, as envisaged in the National Action Plan, as the lead agency to combat and prevent trafficking in persons. Ensure that this body is endowed with the

**responsibility to coordinate, implement, monitor and evaluate activities and initiatives aimed at combating all types of human trafficking;**

**(d) Carry out a national baseline study, in collaboration with research institutes, bilateral partners and civil society, to document the scope and trends of trafficking at the national level. Ensure that the study addresses all forms of human trafficking, its causes and its consequences, particularly trafficking involving labour exploitation and sexual exploitation of Cubans, migrants, refugees and asylum seekers;**

**(e) Establish a systematized and harmonized data collection system, which should include the victims' sex and age and the nature and type of trafficking involved. The system should also include information on traffickers and data on investigations, prosecution rates and sentencing. Such data is vital to the development of informed policy responses to address trafficking in persons.**

97. **With regard to identification, training and capacity-building:**

**(a) Urgently establish standard operating procedures for the identification of all forms of trafficking and for referral of victims, defining indicators to look out for while screening vulnerable persons, including Cubans and undocumented migrants. It is pertinent to note that the accurate and swift identification of victims of trafficking is crucial to activating other actions, such as investigation and prosecution of traffickers, as well as referrals that would allow for adequate assistance and protection of victims;**

**(b) Establish appropriate tools and indicators to enable labour inspectors to identify victims of trafficking during labour checks, as well as immediate protection measures for victims of forced labour;**

**(c) Continue to provide comprehensive training programmes on trafficking in persons in order to enhance the knowledge and awareness of all stakeholders, including police, immigration, customs and maritime officers, labour inspectors, prosecutors, judges, lawyers, employers, employment agencies, civil society organizations and the media;**

**(d) Ensure continued training for law enforcement officials and government authorities, to enhance their capacity to identify trafficked persons promptly and accurately and to make referrals to appropriate services. Additionally, train all stakeholders involved in providing assistance and care to victims of trafficking;**

**(e) Continue to provide training for criminal justice officials, including prosecutors and judges, to raise awareness about emerging trends regarding trafficking in persons, and to ensure a human rights-based and victim-centred approach to prosecution of criminals, and protection of victims;**

**(f) Ensure that medical personnel undertaking missions abroad are trained to detect trafficking situations, including in conflict and humanitarian crisis settings, which are prone to trafficking.**

98. **With regard to support services for victims of trafficking:**

**(a) Protect and assist all victims of trafficking, including adult and child victims of labour trafficking and sexual exploitation, with full respect for their human rights;**

**(b) Make provision for unconditional and appropriate assistance, including social, psychological, medical and legal support, as well as translation assistance and interpretation services for trafficked persons, in accordance with article 6 (6) of the Trafficking in Persons Protocol;**

**(c) Ensure that victims of trafficking are not detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons. Abolish,**

**without delay, the practice of detaining those engaged in prostitution/sex work, among whom there may also be potential victims of trafficking, in "rehabilitation centres";**

**(d) Provide, together with civil society organizations, shelters for victims of trafficking in persons, for men, women and children, and provide them with comprehensive assistance, such as social, psychological, medical and legal support, as well as translation and interpretation services. Ensure that victims living in shelters have freedom of movement and access to employment and are given residence in the country;**

**(e) Develop protocols and/or guidelines for the identification of trafficking and exploitation, defining red flags and indicators to look for while screening vulnerable persons, and adequately train staff on their use. Develop another guideline specifically for the reintegration of Cuban victims of trafficking upon their return from abroad;**

**(f) Ensure that appropriate tools and indicators enable labour inspectors to identify victims of trafficking during labour checks, and that there are immediate protection measures for people found to be in situations of exploitation which may amount to trafficking and forced labour;**

**(g) Ensure that the hotline of the Attorney General's Office is serviced by multilingual staff who have received specialized training about trafficking in persons;**

**(h) Provide victims of trafficking who do not wish to return to their countries of origin, owing to fear of retribution, hardship or retrafficking, with viable alternatives to remain and work legally in Cuba, including through the granting of special residence and work permits;**

**(i) Further develop cooperation between relevant government institutions, civil society organizations and relevant United Nations agencies and programmes to provide support and assistance to victims of trafficking.**

99. **With regard to prosecution:**

**(a) Increase efforts to prosecute traffickers while guaranteeing fair trial rights consistent with a human rights-based approach to criminal justice, and establish the necessary legal framework and procedures in order to ensure that victims of trafficking and witnesses are adequately protected;**

**(b) Continue to ensure that the best interests of the child are at the heart of the criminal justice response in cases involving children;**

**(c) Strengthen the capacity of judicial officials to prosecute trafficking cases.**

100. **With regard to prevention:**

**(a) Step up efforts to raise awareness about all forms of trafficking in persons, including for labour exploitation, sexual exploitation, and the removal of organs;**

**(b) Take urgent action to launch widespread awareness-raising campaigns using the media, information and communications technology, and other channels of communication, so as to send a strong message and bring about a deeper understanding of all forms of trafficking in persons in order to promote understanding of what constitutes trafficking, among the general population and the foreign community in Cuba;**

**(c) Given the gradual opening of the labour market, particularly in the tourism sector, focus on raising awareness and addressing new and emerging forms of trafficking linked with tourism, such as trafficking for the purpose of sexual exploitation of children, and labour exploitation of foreign workers in the construction of tourist infrastructures.**